## SENATE.

FRIDAY, *April 27, 1900.*

Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. SCOTT, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved.

### COMMISSIONED NAVAL OFFICERS.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Navy, transmitting, in response to a resolution of the 18th instant, a supplemental statement showing the number of commissioned officers of different grades and corps on sea duty, on leave of absence or furlough, etc.; which was referred to the Committee on Naval Affairs, and ordered to be printed.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. 222) to provide a government for the Territory of Hawaii.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. 10301) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1901; and

A bill (H. R. 10696) relating to the Twelfth and subsequent censuses, and giving the Director thereof additional power and authority in certain cases, and for other purposes.

### ENROLLED JOINT RESOLUTION SIGNED.

The message further announced that the Speaker of the House had signed the enrolled joint resolution (S. R. 10) providing for the printing of 3,000 copies of House Document No. 1041, relating to the preliminary examination of reservoir sites in Wyoming and Colorado; and it was thereupon signed by the President pro tempore.

### PETITIONS AND MEMORIALS.

Mr. CULBERSON presented a petition of sundry citizens of Austin, Tex., praying for the enactment of legislation granting pensions to the surviving soldiers who served in the Indian wars from the year 1846 to the year 1860, inclusive; which was referred to the Committee on Pensions.

Mr. MONEY. I present a joint resolution of the legislature of Mississippi, urging that an additional appropriation be made for the improvement of the navigation of the Homochitto River, in that State. I ask that the joint resolution be printed in the RECORD and referred to the Committee on Commerce.

There being no objection, the memorial was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

Joint resolution of the legislature of the State of Mississippi memorializing the Congress of the United States to make further and additional appropriation to improve the navigation of the Homochitto River, in the State of Mississippi.

*Be it resolved by the senate (the house concurring)*, That the Congress of the United States be, and is hereby, respectfully memorialized and requested to make an additional appropriation supplemental to the amount already appropriated to improve the navigation of the Homochitto River. This river has its course through a populous and fertile country for a hundred miles or more, but its navigation is obstructed and prevented by rafts, timber jams, and shoal places of no great length and easily removable. Its course is from east to west, while the only trunk line of railroad through its section of country runs from north to south and leaves a large area of country without transportation. While an appropriation of $16,000 has already been made by Congress for improving the navigation of this river, the amount is insufficient to fully complete the work intended, and an additional appropriation is necessary not only to secure safe navigation of this river, but to prevent damage to and the destruction of the work already done by the amount so far appropriated.

*Resolved further*, That the secretary of state be, and is hereby, required to transmit certified copies of this resolution to the Senators and Representatives in Congress of the United States from Mississippi to be presented to Congress.

Passed the senate January 25, 1900.

JAMES T. HARRISON,
*President of the Senate.*

Passed the house February 5, 1900.

A. J. RUSSELL,
*Speaker of the House.*

OFFICE SECRETARY OF STATE,
*Jackson, Miss., February 20, 1900.*

I certify that the foregoing is a true and correct copy of the original filed in this office.

[SEAL.] J. L. POWER,
*Secretary of State.*

Mr. MONEY. I present a joint resolution of the legislature of Mississippi, urging the passage of House bill No. 3988, to reorganize and improve the United States Weather Bureau. I ask that the memorial be printed in the RECORD and referred to the Committee on Agriculture and Forestry.

There being no objection, the memorial was referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

Joint resolution memorializing the Congress of the United States to pass H. R. 3988, being a bill to reorganize and improve the United States Weather Bureau.

Whereas the Weather Bureau Service of the United States is of incalculable benefit to the maritime and agricultural interests of the Southern States of the Union; and

Whereas a bill is now before the Congress of the United States to reorganize and improve said Weather Bureau branch of the Agricultural Department of the United States: Therefore, be it

*Resolved by the senate (the house concurring)*, That the Congress of the United States is hereby respectfully memorialized and requested to pass H. R. 3988, being a bill to reorganize and improve the United States Weather Bureau; and the members of Congress from Mississippi are earnestly requested to use their best efforts to have such a law enacted.

Passed the senate February 2, 1900.

JAMES T. HARRISON,
*President of the Senate.*

Passed the house February 5, 1900.

A. J. RUSSELL,
*Speaker of the House.*

OFFICE SECRETARY OF STATE, *Jackson, Miss., February 20, 1900.*

I certify that the foregoing is a true and correct copy of the original filed in this office.

[SEAL.] J. L. POWER, *Secretary of State.*

Mr. MONEY. I present a joint resolution of the legislature of Mississippi, urging that an appropriation be made for the improvement of the channel of Ship Island Harbor from the terminus of the Gulf and Ship Island Railroad Company to main deep water. I ask that the memorial be printed in the RECORD and referred to the Committee on Commerce.

There being no objection, the memorial was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

A joint resolution memorializing the Congress of the United States with reference to Ship Island Harbor and the Gulf and Ship Island Railroad Company.

Whereas the Gulf and Ship Island Railroad Company was incorporated by the State of Mississippi by act of the legislature approved February 23, 1882, which said act, among other powers, contained the following:

"SEC. 17. *Be it further enacted*, That the right, power, and authority to reclaim the submerged lands of said Mississippi Sound, for a distance of one-half mile in either direction east and west from the point of intersection of said line of railroad with the waters of said sound, extending 6 miles from the shore of the present mainland in a southerly direction, to take, have, and to hold said lands so reclaimed, and to enjoy, use, and control the same to special use and benefit of said company; to lease, re-lease, sell, convey, mortgage, or otherwise dispose of the same; to locate, construct, and thereafter to own and maintain and use suitable wharves, piers, breakwaters, basins, and depots, or other appurtenances, appendages, and buildings thereon necessary and proper for the loading and unloading, receiving and discharging freight and passengers from seagoing, lightering, and coasting vessels;" and

Whereas some question has been raised as to the validity of said grant from said State of Mississippi; and

Whereas it is expedient that the same should be confirmed unto the said railroad company by the Congress of the United States; and

Whereas the Gulf and Ship Island Railroad has been constructed for a distance of over 100 miles, and is being rapidly pushed to completion; and

Whereas it is only about 5½ miles from said pier to deep water leading to the main Ship Island Harbor; and

Whereas it is only a question of dredging a channel of sufficient depth for about 5½ miles in length to connect said terminus of said railroad with the deep-water harbor at Ship Island; and

Whereas Ship Island Harbor is recognized as one of the best harbors in the South; and

Whereas the great increase of exportation through Ship Island Harbor demands the opening of said channel from the terminus of said Gulf and Ship Island Railroad to deep water: Therefore, be it

*Resolved*, 1. That the Congress of the United States be, and is hereby, memorialized to make a suitable appropriation sufficient for the improvement of the channel leading from the terminus of said railroad to main deep water at Ship Island.

2. That the Congress of the United States be further memorialized and requested to confirm unto the Gulf and Ship Island Railroad Company the said grant recited in the preamble of these resolutions and contained in section 17 of the charter of said railroad company.

3. That the Senators and Representatives of the State of Mississippi and of the Congress of the United States be, and they are hereby, requested to use their best efforts to secure such appropriation as may be needed for the purpose above recited, as well as the ratification and confirmation of the said grant, at the present session of Congress.

Adopted by the senate February 8, 1900.

JOHN R. DINSMORE,
*President of the Senate.*

Adopted by the house February 14, 1900.

A. J. RUSSELL,
*Speaker of the House.*

OFFICE SECRETARY OF STATE,
*Jackson, Miss., February 20, 1900.*

I certify that the foregoing is a true and correct copy of the original filed in this office.

[SEAL.] J. L. POWER, *Secretary of State.*

Mr. MCMILLAN presented a petition of Pomona Grange, Patrons of Husbandry, of Branch County, Mich., praying for the extension of rural free mail delivery; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of Iron Molders' Union No. 10, of Albion, Mich., remonstrating against the enactment of legislation to increase the revenue tax on oleomargarine; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of Central City Lodge, No. 95, International Association of Machinists, of Jackson, Mich., praying

for the enactment of legislation providing for the construction of the new war vessels at the Government navy-yards; which was referred to the Committee on Naval Affairs.

Mr. GEAR presented a memorial of sundry manufacturers and jobbers of Davenport, Iowa, remonstrating against the enactment of legislation prohibiting the use of alum in baking powders; which was referred to the Committee on Agriculture and Forestry.

Mr. SIMON presented a petition of Surprise Grange, No. 233, Patrons of Husbandry, of Oregon, praying for the adoption of certain amendments to the interstate-commerce law; which was ordered to lie on the table.

He also presented a petition of Surprise Grange, No. 233, Patrons of Husbandry, of Oregon, praying for the enactment of legislation to secure to the people of the country the advantages of State control of imitation dairy products; which was referred to the Committee on Agriculture and Forestry.

Mr. HAWLEY presented a petition of the Columbia Historical Society, praying for the enactment of legislation to prevent the desecration of the national flag; which was referred to the Committee on the Judiciary.

Mr. BURROWS presented petitions of the Christian Citizenship of Evart and the Christian Endeavor Union of Paw Paw, all in the State of Michigan, praying for the enactment of legislation to prohibit the sale of intoxicating liquors in any post exchange, canteen, or transport, or upon any premises used for military purposes by the United States; which were referred to the Committee on Military Affairs.

He also presented a petition of Company H, Third Infantry, Michigan National Guards, of Owosso, Mich., praying for the enactment of legislation providing for the better equipment of the National Guard; which was referred to the Committee on Military Affairs.

He also presented a memorial of Iron Molders' Union No. 104, of Albion, Mich., remonstrating against the enactment of legislation imposing a tax upon butterine, oleomargarine, and all kindred dairy products; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of Pomona Grange No. 22, Patrons of Husbandry, of Branch County, Mich., praying for the enactment of legislation providing for a liberal appropriation for the extension of free rural mail delivery; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. COCKRELL presented a petition of the city council of Cape Girardeau, Mo., praying for the enactment of legislation authorizing the Southern Missouri and Illinois Railroad and Bridge Company to construct a bridge at or within 5 miles of the city of Cape Girardeau, in that State; which was referred to the Committee on Commerce.

## REPORTS OF COMMITTEES.

Mr. PLATT of Connecticut. I am directed by the Committee on Indian Affairs, to whom was referred the bill (S. 2030) to amend an act entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889, to report a new bill as a substitute, which I ask may be twice read and placed on the Calendar, and that Senate bill 2030 be indefinitely postponed.

The bill (S. 4462) to amend an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1897, and for other purposes," approved June 10, 1896, was read twice by its title.

The PRESIDENT pro tempore. Senate bill 2030 will be indefinitely postponed.

Mr. QUARLES, from the Committee on Indian Affairs, to whom was referred the bill (S. 2642) for the relief of Robert F. Thompson for services rendered by him for compilation of the laws relating to Indian affairs, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the joint resolution (S. R. 111) concerning certain Chippewa Indian reservations in Minnesota, reported it without amendment, and submitted a report thereon.

Mr. PERKINS, from the Committee on Appropriations, to whom was referred the bill (H. R. 9711) making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, reported it with amendments, and submitted a report thereon.

## THE CONGRESSIONAL RECORD.

Mr. PLATT of New York. I am directed by the Committee on Printing, to whom was referred the joint resolution (S. R. 117) to furnish the daily and bound CONGRESSIONAL RECORD to the governors of Alaska and Porto Rico for distribution, to report it without amendment; and I ask for its present consideration.

The joint resolution was read, and, by unanimous consent, the Senate, as in Committee of the Whole, proceeded to its consideration. It directs the Public Printer to distribute not more than 25 copies of the daily CONGRESSIONAL RECORD and 25 copies of the bound CONGRESSIONAL RECORD to persons, newspapers, or libraries designated by the governors of Alaska and Porto Rico, respectively.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

## REPORT ON FISHERIES OF PORTO RICO.

Mr. PLATT of New York. I am directed by the Committee on Printing, to whom was referred the joint resolution (H. J. Res. 198) providing for the printing and distribution of the general report of the expedition of the steamer *Fishhawk* to Porto Rico, including the chapter relating to the fish and fisheries of Porto Rico, as contained in the Fish Commission Bulletin for 1900, to report it with amendments; and I ask for its present consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

The amendments of the Committee on Printing were, in line 4, to strike out "fifteen thousand" and insert "seven thousand five hundred;" in line 8, to strike out "nine thousand" and insert "four thousand five hundred;" in line 9, to strike out "three thousand" and insert "one thousand five hundred;" and in line 10, to strike out "three thousand" and insert "one thousand five hundred;" so as to make the joint resolution read:

*Resolved, etc.*, That there be printed and bound, under the direction of the Joint Committee on Printing, 7,500 copies of the general report of the expedition of the steamer *Fishhawk* to Porto Rico, including the chapter relating to the fish and fisheries of Porto Rico, as contained in the Fish Commission Bulletin for 1900: 4,500 for the use of the House, 1,500 for the use of the Senate, and 1,500 for the use of the United States Fish Commission.

The amendments were agreed to.

The joint resolution was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time, and passed.

## BUREAU OF AMERICAN ETHNOLOGY.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the following concurrent resolution from the House of Representatives, reported it without amendment; and it was considered by unanimous consent, and agreed to:

*Resolved by the House of Representatives (the Senate concurring)*, That there be printed at the Government Printing Office 8,000 copies of any matter furnished by the Director of the Bureau of American Ethnology relating to researches and discoveries connected with the study of the American aborigines, the same to be issued as bulletins uniform with the annual reports, 1,500 of which shall be for the use of the Senate, 3,000 for the use of the House of Representatives, and 3,500 for distribution by the Bureau.

## ESTATE OF WILLIAM DILLON, DECEASED.

Mr. MCCUMBER, from the Committee on Claims, to whom was referred the bill (S. 1659) for the relief of the executor of William Dillon, deceased, reported the following resolution; which was considered by unanimous consent, and agreed to:

*Resolved*, That the bill (S. 1659) entitled "A bill for the relief of the executor of William Dillon, deceased," now pending in the Senate, together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887. And the said court shall proceed with the same in accordance with the provisions of such act, and report to the Senate in accordance therewith.

## TELEPHONE AND TELEGRAPH WIRES.

Mr. MCMILLAN. I am directed by the Committee on the District of Columbia to report a joint resolution, and I ask for its immediate consideration.

The joint resolution (S. R. 120) authorizing certain permits for telephone and telegraph wires was read the first time by its title and the second time at length, as follows:

*Resolved, etc.*, That the Commissioners of the District of Columbia are hereby authorized to grant a permit for such telephone wires as may be necessary for the purposes of the Agricultural Department, and are also authorized to grant temporary permits to connect any political headquarters in the District of Columbia with the trunk lines of any telegraph or telephone company operating in said District, which temporary permits shall terminate January 1, 1901: *Provided*, That nothing in this resolution shall be construed to authorize the erection of any telephone or telegraph pole in the District of Columbia, excepting as already provided by law.

Mr. PETTIGREW. Does that measure come from the House?

Mr. MCMILLAN. No; it is reported from the Committee on the District of Columbia. It is just a temporary arrangement for telephone wires to the Agricultural Department and also arrangement to connect any political headquarters in the District by telegraph or telephone.

The PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution was considered as in Committee of the Whole.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. STEWART introduced a bill (S. 4463) relating to mining privileges on Indian reservations; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. CULLOM introduced a bill (S. 4464) to provide for the purchase of a site and the erection of a public building thereon at Pekin, in the State of Illinois; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Public Buildings and Grounds.

Mr. WARREN introduced a bill (S. 4465) granting an increase of pension to William W. Lane; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 4466) granting a pension to I. N. Bard; which was read twice by its title, and referred to the Committee on Pensions.

Mr. ELKINS introduced a bill (S. 4467) for an examination of the property of the Little Kanawha River Navigation Company; which was read twice by its title, and referred to the Committee on Commerce.

Mr. SCOTT introduced a bill (S. 4468) to amend section 6 of an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886; which was read twice by its title, and referred to the Committee on Finance.

He also introduced a bill (S. 4469) to amend section 41 of an act entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890; which was read twice by its title, and referred to the Committee on Finance.

Mr. McENERY introduced a bill (S. 4470) for the relief of the heirs of Pierre Sauvé; which was read twice by its title, and referred to the Committee on Claims.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. PERKINS submitted an amendment intended to be proposed by him to the naval appropriation bill; which was read, ordered to be printed, and referred to the Committee on Naval Affairs, as follows:

Amendment intended to be proposed by Mr. PERKINS to the bill (H. R. 10450) making appropriations for the naval service for the fiscal year ending June 30, 1901, and for other purposes, viz: Insert the following:

That the Secretary of the Navy be, and he is hereby, directed to cause to be made an examination of all-American cable route across the Pacific, beginning at the entrance to the Straits of Fuca, touching at Sitka and Dutch Harbor and extending along the Aleutian chain of islands, either on the north or the south side, as may be found expedient, thence along the most shoal waters available to the Philippine Islands. This examination shall be sufficient to show the availability of this route for cable purposes, the approximate depth of the water along the route, the most favorable points for cable landings, and the estimated cost of an all-American cable by this route, as compared with others which have been proposed, and the probable revenues to be derived from it.

Mr. CLAY submitted an amendment relating to the classification of employees of the Post-Office Department intended to be proposed by him to the Post-Office appropriation bill; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. McMILLAN submitted an amendment relative to the pay and allowance of officers of the corps of chaplains, professors of mathematics, and civil engineers of the Navy, etc., intended to be proposed by him to the naval appropriation bill; which was referred to the Committee on Naval Affairs, and ordered to be printed.

AFFAIRS IN THE PHILIPPINE ISLANDS.

Mr. PETTIGREW. I submit a resolution and ask for its present consideration.

The resolution was read, as follows:

*Resolved*, That the President be, and he is hereby, requested, if not incompatible with the public interest, to inform the Senate whether General Torres, one of the officers of the Philippine army, came to General Otis with a flag of truce on February 5, 1899, the day after the fighting commenced between our forces and those of the Filipinos, and stated to General Otis that General Aguinaldo declared that fighting had been begun accidentally and was not authorized by him, and that Aguinaldo wished to have it stopped, and that to bring about a conclusion of hostilities he proposed the establishment of a neutral zone between the two armies of a width that would be agreeable to General Otis, so that during the peace negotiations there might be no further danger of conflict between the two armies, and whether General Otis replied that fighting having once begun must go on to the grim end. Was General Otis directed by the Secretary of War to make such an answer? Did General Otis telegraph the Secretary of War on February 9, 1899, as follows: "Aguinaldo now applies for a cessation of hostilities and conference. Have declined to answer?" And did General Otis afterwards reply? Was he directed by the Secretary of War to reply, and what answer, if any, did he or the Secretary of War make to the application to cease fighting?

The President is also requested to inform the Senate whether the flag of the Philippine republic was ever saluted by Admiral Dewey or any of the vessels of his fleet at any time since May 1, 1898. Did Admiral Dewey, at the request of Aguinaldo or any officer under him, send the vessels *Concord* and *Raleigh* to Subig Bay to assist Aguinaldo's forces in the capture of the Spanish garrison at that place? Did said vessels assist in the capture of the Spanish garrison, and after the surrender did they turn the prisoners thus taken over to the Philippine forces?

Mr. LODGE. Let that go over, Mr. President.

The PRESIDENT pro tempore. The resolution goes over under the rule.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his secretaries, announced that the President had on this day approved and signed the act (S. 3465) to provide an American register for the steamship *Garonne*.

HOUSE BILLS REFERRED.

The bill (H. R. 10301) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1901, was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

The bill (H. R. 10696) relating to the Twelfth and subsequent censuses, and giving the Director thereof additional power and authority in certain cases, and for other purposes, was read twice by its title, and referred to the Committee on the Census.

SENATOR FROM WEST VIRGINIA.

The PRESIDENT pro tempore. The morning business is closed, and the Chair lays before the Senate a resolution which will be read.

The Secretary read the resolution reported by Mr. McCOMAS from the Committee on Privileges and Elections March 12, 1900, as follows:

*Resolved*, That NATHAN B. SCOTT has been duly elected a Senator from the State of West Virginia for the term of six years, commencing on the 4th day of March, 1899, and that he is entitled to his seat in the Senate as such Senator.

The PRESIDENT pro tempore. The pending question is the motion of the Senator from Alabama [Mr. PETTUS], which will be stated.

The Secretary read as follows:

That the resolution and report be recommitted to the Committee on Privileges and Elections with instructions to investigate the case fully by all legal evidence offered to it.

Mr. MONEY. Mr. President, if there is to be debate upon this resolution, I ask consent of whoever proposes to take the floor to permit me to take the floor for a little while in explanation of a bill that I gave notice I would call up on last Wednesday and which I have withdrawn from time to time to suit the convenience of gentlemen in charge of privileged questions. I ask the Senator from New Hampshire if he will consent that I shall go on to-day?

Mr. CHANDLER. The Senator from Mississippi having given notice several days ago that he would ask leave to make some remarks that he now wishes to submit, I shall not interpose any objection, if no other Senator wishes to proceed now upon the resolution.

Mr. HALE. The Senator does not propose to bring this bill up for any purpose except to make remarks on it?

Mr. MONEY. I wish to present views to the Senate, to make a few remarks explanatory to go into the RECORD. I do not desire to push the consideration of the bill just now, of course. I do not expect any great delay about it, however; but I hope the Senators who are opposed to the bill will be prepared with their part of the debate as soon as they find it convenient to do so. I desire to submit some remarks to-day if I can get unanimous consent.

The PRESIDENT pro tempore. The Chair hears no objection.

ABANDONED PROPERTY IN INSURRECTIONARY DISTRICTS.

Mr. MONEY. I ask that Senate bill 602 be read by title.

The SECRETARY. A bill (S. 602) to revive and amend an act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States and acts amendatory thereof.

Mr. MONEY. Mr. President, I desire to give notice to the committee, and also to the Senate—and in this matter I have, I believe, the support of the committee—that in order to relieve any misconception of the purpose and intent of this bill I will submit an amendment to add another section, which I will ask the Secretary to read. The phraseology can be changed, of course, if it is objectionable.

I propose to add a new section to the bill, as follows:

SEC. 6. The provisions of this act shall apply exclusively to the cotton belonging to private owners seized by the agents of the Government of the United States under the act of March 13, 1865, called the captured and abandoned property act, which cotton was sold and the proceeds thereof placed in the Treasury of the United States, and shall not apply to any other property seized under said act.

Mr. President, that new section is intended to do away with any misunderstanding as to the class of people who are to be relieved by the provisions of this proposed act. It is also to prevent any misapprehension as to the number of claimants who may be admitted to a standing in the court to press any kind of a claim arising from the seizure or appropriation or destruction of property during the civil war.

I feel quite sure that there has been a misunderstanding of the bill, and I also am willing to admit that the misunderstanding comes quite naturally from its phraseology. The intent and purpose of this measure, however, has only been to give those claimants who owned cotton seized under the captured and abandoned property act of 1863 an opportunity to go into the court to prove their share of a trust fund now in the Treasury of the United States. The proof of the proceeds and sale of cotton, to whom it belonged, the price, the number of pounds, bales, and so on, are only to be found in the office of the Secretary of the Treasury of the United States, and consequently any claimant who shall present himself will have simply the task of proving the proprietorship of the cotton taken that went into the hands of the authorized agents, either military or fiscal, of the United States.

No other persons will have the right under this bill when that amendment is adopted (and there is no doubt about that) to have a standing in the court at all. Consequently it can not be construed by the most adverse Senator to mean that the door is to be opened to a general raid upon the Treasury. That opinion I know has been honestly entertained. I know it has been pressed by the distinguished Senator from Maine [Mr. HALE], whose general character for fair-mindedness we have all had occasion to respect, and who, on account of his personal character and about a third of a century of honorable and useful service in both Houses, I am inclined very much to yield to in matters of this sort.

Mr. President, this cotton was seized under the act of 1863 with no intention on the part of the Government to convert the proceeds to its own use. The law said that there should be an appeal to the Court of Claims on the part of any loyal owner of the cotton seized. The result of that was that the law expiring in 1868, the disloyal owners of cotton seized did not bring suit, because they were barred by the provisions of the act.

But later, after the expiration by limitation of the statute, the Supreme Court of the United States, in the cases of Pargoud, Padelford, Armstrong, Klein, administrator, and quite a number of other cases with which Senators are perhaps familiar who have studied this subject, declared that amnesty not only forgave the offender of disloyalty but condoned the offense and wiped it out as though it never had existed, and in its terms it restored him to his right of property. It is quite true that a month after that general amnesty proclamation Congress attempted to withdraw the authority which it had conferred upon the Executive to grant this general amnesty. The Supreme Court declared that the act was unconstitutional and that the order of amnesty must be recognized by the court.

Now, Mr. President, there are any number of cases which have declared that this sum of money arising from the sale of the cotton that belonged to private owners was a trust fund, and that the United States occupied no other relations to it except that one of a fiduciary character. The men who owned this cotton are the cestui que trusts, and this simply gives them permission to go into court and prove that so much of the money in that fund belonged to them. If they can not establish that fact (and they can only establish it from the papers, books, and records now in the office of the Secretary of the Treasury), then they are not entitled to anything whatever.

I for one am not considering now, and will not, the advisability and propriety of opening the courts generally to claimants of any kind or character of property. This bill has one single and sole purpose, and that is to distribute a trust fund.

Mr. STEWART. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Mississippi yield to the Senator from Nevada?

Mr. MONEY. Certainly.

Mr. STEWART. I wish to say one word, if the Senator pleases. While I agree with him that the United States should refund to the proper parties whatever there may be in this trust fund, I wish to suggest to him that the United States was supposed to have a very large interest in this fund originally. It results from the cotton belonging to the Confederate government, and it was supposed that that would amount to nearly a hundred million dollars. It has been given out from time to time to claimants until the amount left is only about $12,000,000, and it appears, and there is no doubt about it, that many honest claimants, perhaps more than would absorb the whole of it, have been left out.

I would not want to have the impression go to the country generally that the United States has made a large speculation out of it, because the United States has lost what it took from the Confederate government. It has lost by money being paid out that ought not to have been paid out, and those who ought to have received it have not received it. Undoubtedly they would be entitled to all this fund, and perhaps more. But if the claimants limit themselves to the fund now on hand I am willing that it should be paid out and distributed among those who can show themselves to be rightful claimants.

Mr. MONEY. Mr. President, in reply to the suggestion of the Senator from Nevada, there is no intention, as I understand it, to open the case of the Confederate cotton. It is generally conceded that the cotton which had been sold to the Confederacy was a legitimate prize of war to the United States.

Mr. STEWART. That is true, but——

Mr. MONEY. That matter is entirely dehors the whole thing.

Mr. STEWART. But I wanted to explain why the Government had held on to it up to this time. It was supposed that it belonged to the Government, but the bulk of it having been paid out to persons who probably did not have good claims, there are bona fide claimants most of whom have been ignored, and it ought to be corrected by the proper tribunal. I agree with the Senator in that respect, but I did not want to have it understood that the Government had been seizing upon this private property without any excuse, because the reason for holding it at all was because it was supposed that that and much more belonged to the Government in consequence of having been taken as captured and abandoned property; but that not being the case, the Government having administered it, and the rightful owners not having received it, the Government is responsible to them, I think, and ought to pay it back.

Mr. MONEY. The Supreme Court have settled that question, Mr. President. This subject has been under consideration ever since the Thirty-ninth Congress. Bills have been introduced over and over in both Houses. They have been reported in every instance favorably—favorably from the Claims Committee of the Senate, favorably from the Judiciary Committee and the War Claims Committee in the House. We have a dozen executive documents here that have been sent in answer to inquiries made upon the Secretary of the Treasury, explaining this whole subject. We have gone over it again and again. There can be no dispute whatever upon the fact. There can be no dispute upon what the Supreme Court has decided. Gentlemen may think that the Supreme Court has erred in its decision, but they can not doubt what the Supreme Court has said. We very frequently disagree with the opinion of the Supreme Court. I am in a chronic state of disagreement myself with some of the opinions of that great tribunal, yet I bow to them.

Now, Mr. President, there is no intention in this bill to open up any claim to any person except to those who really owned the property, where the property was seized by the authorized agents of this Government, whether military or fiscal. Where cotton was not sold and the proceeds placed in the Treasury, and the proceeds of which sale could not be accurately told by the records of the Department itself, the claimant can not go into the Department and find anything there, by the consent of the Secretary or the officers of the Treasury Department, to bolster up his claim. He comes to the court simply with the proof of proprietorship and the proof of the seizure of the cotton, and he must trust to the archives of this Government for the proof which establishes his claim to a distributive share of this fund.

I said there could be very little debate about the facts. There can be none; and I think there can be just as little debate about what the court has said. The decisions are very numerous; they are so uniform that there must be consent as to what the court has determined. The court has determined, first, that every disloyal owner had been, by the general amnesty proclamation of December 20, 1878, pardoned his offense, his offense condoned, and that he had been fully restored to his rights of property. That is the language of the amnesty proclamation, and the court has recognized that as binding upon them in their actions as would be an act of Congress.

Another thing, Mr. President, according to the laws of civilized warfare, this cotton was not the subject properly of capture and appropriation. We have just repeated in The Hague Convention, to which we had our delegates, that private property must be respected in war. In the military conference held at Berlin in 1874, according to the report of Sir A. Horsford, it was determined that private property of every kind must be respected by hostile armies, and in the Articles of War, drawn up by Dr. Lieber for the use of the United States Army, the same doctrine is laid down. For more than two hundred years belligerents have not taken private property except for use, and then always upon payment.

It requires the greatest emergency, like a siege or something of that sort, the beleaguring of a city or fortress, to authorize a military officer to violate this rule; and the cases which we have been paying under the Bowman Act have recognized this principle, and the payments have been made under the legal fiction of an implied contract. The court has laid down in 5 Cranch the fact that the General Commanding the Army of the United States could not seize this cotton, because it would have been a violation of international law, of the laws of civilized warfare, without a special authority of Congress to do so; that Congress gave these generals authority to seize this cotton.

They sent their agents through the country, to every nook and corner, and searched it out; they brought the cotton into Federal lines; they sent it to Nashville and to Cincinnati and to New York and it was sold at auction. A part of it was sold for gold and the

gold sold for a premium and was paid in the Treasury, a sum of over $2,000,000. In every instance the general sold it under the act of Congress.

Now, waiving the decision of the court, I do not believe that Senators in this Chamber will desire to put themselves in the attitude of advising any longer that this fund shall be retained in violation of the laws of civilized nations, the laws of humane warfare, the rights accorded to belligerents by the great publicists and by the example of nations.

Mr. President, not only is this true, but it is becoming expressed with more emphasis in every conference of nations on the subject of the rights of neutrals and the rights of belligerents and the rights of private parties. The United States has had the honor since it became one of the family of nations to lead in every effort that would mitigate the horrors of warfare. It has especially distinguished itself by refusing to sign the convention of Paris of 1852, for the sole reason, as expressed, that the same rule that exempted private property on land was not extended to private property at sea. With this glorious record I hope the United States will not be put in the attitude by objecting Senators of continuing a system of private seizure and plunder which is not justified by any civilized nation in the world or by any international law.

Mr. CHANDLER. Will the Senator allow me to ask him a question?

Mr. MONEY. Certainly.

Mr. CHANDLER. I understood the Senator to say that the seizures of cotton made by the Union troops during the war were contrary to the principles of international law if it was cotton which belonged to private parties.

Mr. MONEY. Yes.

Mr. CHANDLER. Does the Senator contend for that?

Mr. MONEY. I do, and I have got papers before me and the opinion of the Supreme Court of the United States on that.

Mr. CHANDLER. If the Senator will permit me, then I understand him to say that during the war if a Union commander knew that just beyond his lines or within his lines there were one hundred, or five hundred, or a thousand bales of cotton, notwithstanding the fact that cotton was the great source of revenue for the Confederacy, being either bought by the Confederate Government or taken by seizure or by taxation and sent abroad through the blockade, so as to give the Confederate Government money with which to purchase munitions of war in foreign parts to be brought in through the blockade—that notwithstanding that was the well-known situation, it was contrary to the laws of war as understood by the nations for the Union commander to go and seize such cotton and send it to New York or to Cincinnati and have it sold and the proceeds put into the Treasury. Does the Senator maintain that proposition in all its length and breadth?

Mr. MONEY. In answer to my friend from New Hampshire, I will say that, as is very well known to international law, there are emergencies that will warrant a commanding officer in seizing any kind of property or destroying any kind of property. He can, for instance, tear down a house that is private property which obstructs the range of a battery. He can do a great many things under an emergency, and, particularly, he can do that which the Senator has suggested. He can sap the resources of the country.

Mr. CHANDLER. Would not that destroy the Senator's proposition?

Mr. MONEY. As in the case the Senator has cited, if it was right over the line, he could make a seizure. I say he can do that, but I submit the question simply of the seizure of cotton which was abandoned by the owner or captured by force, it made no difference which, and the proceeds put in the Treasury.

Now, I desire to have read, in order to put it in a very much more authoritative manner than I could answer the question, the decision of the court of the United States; and I will ask the Secretary to read from where I have marked here in 5 Cranch, 231 United States Reports, United States *vs.* 1,756 shares of the capital stock of the Great Western Railroad Company of Illinois.

Mr. President, I believe, instead of reading that, I will give the substance of it. It was first declared by the court that a forfeiture of property is provided for only in case the property is employed, with the knowledge or consent of its owner, in and of insurrection. That is one answer.

Mr. CHANDLER. What is the name of the case?

Mr. MONEY. It is the case in 5 Cranch, 231 United States Reports, United States *vs.* One thousand seven hundred and fifty-six shares of the capital stock of the Great Western Railroad Company of Illinois, but I desire to direct the attention of the Senate to this point:

> The seizure of an enemy's property by the United States as a prize of war, on land, jure belli, is not authorized by the law of nations, and can be upheld only by act of Congress.

That was the statement I made. This decision is based not only upon natural reason, but upon the example of nations; and upon this decision of the Supreme Court of the United States I stand.

Mr. HALE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Mississippi yield to the Senator from Maine?

Mr. MONEY. Certainly.

Mr. HALE. I do not wish to break in inopportunely on any particular point of the Senator's argument, but at some time I want to ask him a question.

Mr. MONEY. Will the Senator please ask now? I would just as soon have the question now.

Mr. HALE. I understand the Senator to claim that this bill should pass upon the force of decisions, perhaps the first being that of The United States *vs.* Klein, which took the ground that here is a fund, and that the whole question as to the disposition of that fund as affecting loyalty is settled by the general proclamation of amnesty.

Mr. MONEY. I say that.

Mr. HALE. Now, what does the Senator do with the joint resolution of March 30, 1868, which seems to have been unaccountably left out of the consideration of the courts and not even referred to; but which in terms covers all this money into the Treasury, and does not leave it as a fund. Has the Senator's attention been called to the joint resolution of March 30, 1868? I do not find in any investigation that has taken place into this question, in the arguments of counsel, or in the opinions of the courts, that any reference has been made to that joint resolution.

Mr. JONES of Arkansas. I hope the Senator will read that joint resolution.

Mr. HALE. But it has been treated as a fund, when in fact it was by the terms of the joint resolution of March 30, 1868, turned into the Treasury. Here is the provision:

> That all moneys which have been received by any officer or employee of the Government, or any Department thereof, from sales of captured and abandoned property in the late insurrectionary districts, under or under color of the several acts of Congress providing for the collection and sale of such property, and which have not already been actually covered into the Treasury, shall immediately be paid into the Treasury of the United States, together with any interest which has been received or accrued thereon.

I thought it proper to call the attention of the Senator to this act, which may have escaped him.

Mr. MONEY. It has not escaped me.

Mr. HALE. But which certainly he should consider before he goes on with the treatment of the subject, and not neglect it.

Mr. MONEY. If the Senator will please pardon me, I have observed that; but that does not relieve the United States of its responsibility as a trustee. The decision, in the first place, was subsequent to that proclamation and subsequent to that joint resolution, and the court has decided over and over again—especially in the Padelford case, in the Armstrong case, in the Klein case, in the Wilson case, and in many others—that that amnesty proclamation absolutely reinstated every one of the disloyal owners who were excluded by the captured and abandoned property act, which left the court open to an appeal by loyal citizens of the United States in the insurrectionary States, and this amnesty proclamation came subsequent to that.

Even if that were true, and there had been no subsequent amnesty proclamation, the decisions of the court are uniform and numerous to show that such disabilities have been wiped out, and those people have become loyal in the eye of the law.

The Senator knows the short duration of the act of 1863, permitting loyal citizens to go into court and make their claims for their distributive share of this trust fund. I say "trust fund" because that is the language of the court. The language of the court is that the United States is a trustee and that there was never any intention to divest the owners of their property rights, or to deny to those who could prove their rights a day in court.

The court having decided that if that is in full force to-day, it makes no difference what has become of the property. Suppose this fund is no longer segregated as the cotton-trust fund, but has been covered into the general fund of the Treasury—I call the Senator's attention to the fact that it has been done since the date of that act by, I believe, another provision; I think, in an appropriation act subsequent to that—and that it has not affected at all the rights of the cestuy que trust, and it does not in any degree remove the responsibility of the United States as a trustee.

Mr. HALE. Now, Mr. President——

Mr. MONEY. If the Senator will pardon me just one moment, permit me to add that in the time when under the statutes the loyal claimants made their claim good in the case, as they perhaps could with the proofs furnished them from the office of the Secretary of the Treasury, millions of this money were distributed exactly as the law had intended to loyal owners, but the disloyal owners, being barred by the express terms of the act, did not bring their suits; and it is very honorable to these claimants that they did not consent to perjure themselves in order to establish claims for their own profit.

But when the Supreme Court had declared that the general amnesty had wiped out all distinction between the loyal and the disloyal, it implied a full restoration to property rights. The act had expired by limitation, and there has since been no tribunal

wherein the claims of one who had been heretofore disloyal could have been presented. The object is to allow these people to go into the courts; to let them stand rehabilitated in their rights under the amnesty proclamation, so that they may go into some tribunal and present evidence of their right to their distributive share of this fund.

Mr. HALE. Let me ask the Senator in respect of a pardon or amnesty in the case of a fine which has been imposed and paid, does he believe that a pardon would restore the fine?

Mr. MONEY. Well, I will not go that far.

Mr. HALE. What I claim is that if that penalty had been completely enforced the money was not held as a fund, and months before the pardon or general amnesty was issued the whole thing had been closed and the money had been turned into the Treasury. A pardon would not affect that; a pardon could not restore that after that had been done, and general amnesty could not do that. However, I do not propose to discuss that matter.

Mr. MONEY. I will reply to the Senator right on that point, and I am very glad he has brought it up. I do not want to make a speech, but to explain this bill and to have it passed.

I am speaking for a class of people who have suffered destitution; many of them have been in poverty and have suffered for a very long while. Its effect upon them has been greater than can probably be appreciated on the other side of the Chamber. It has prevented many young men and women from having that advantage of education to which they were fairly entitled in the race of life. It has produced a condition among a certain class that has been detrimental to their elevation, their education, and their refinement; it has brought miserable consequences to those people without any fault of theirs.

I rest simply on what the Supreme Court of the United States has said. I do not go outside of the general class of cases to find exceptions. This is not a bill for exceptional cases; it is a bill for general cases, and no man can get a single dollar out of this fund, whether it be in the general fund or whether it be segregated, unless by the documents in the possession of the Secretary of the Treasury he can prove that the cotton was seized, that he was the rightful owner, that it was sold by the proper agent of the United States, and the proceeds placed in the Treasury, together with an account of the number of bales, the number of pounds, and the price paid per pound.

I say the court has determined this matter over and over again, not in the exceptional cases mentioned by my friend from Maine, but as to the general fact that restoration of the rights of those men has been absolutely accomplished by the amnesty proclamation and according to the very phrase of the amnesty proclamation itself, which was designed to restore them to their rights of property; which was designed to rehabilitate the disloyal citizen in every respect. In other words, there was not to be a particle of difference in the late insurrectionary States between the man who was loyal and the man who was disloyal, either as to civil, political, or any other rights.

I rest upon the decision of the Supreme Court of the United States. It has been repeated over and over again; and, as I said at the outset, gentlemen may differ with the court as to the correctness of the decision, yet they can not differ as to what the court has actually and really held. That is what I rely upon.

Mr. President, the several points that have been raised heretofore are distinctly and succinctly stated in the Klein case——

Mr. SULLIVAN. I suggest as to one point the Senator from Maine a moment ago made, before my colleague goes on to the next point, that this property had been covered into the Treasury before the amnesty, my colleague might give the Senator the dates of the various proclamations beginning back in 1863; May, 1865; September, 1867; July, 1868, and December 25, 1868.

Mr. HALE. That is the act upon which stress is laid—the act of December, 1868.

Mr. SULLIVAN. There was more than one which gave precisely the same right, except that the act of 1868 relieved the oath. The money was covered into the Treasury on the 28th of June, 1868, and the war having ended prior to that time the rights of claimants were complete, and the money was turned over. The only trouble was that they could not go into the court, being barred by the statute of limitations.

Mr. MONEY. There has been a subsequent act to that mentioned by the Senator from Maine [Mr. HALE], very much later on, and I believe it was in an appropriation bill. That covered this fund back into the general fund of the Treasury; but Congress could not work a forfeiture of property by law. It takes the process of the courts to say that a man can be deprived of his property. He must have due process of law; he must have his day in court. We can not seize a ship on the sea, according to international law, and condemn that ship until the case has been in the admiralty courts and adjudged a prize of war; and it is proposed now, because a resolution of Congress repealed an act heretofore passed, to take a segregated fund and put it into the general fund of the Treasury without any process of law whatever. If that can be done, any kind of property can be seized and appropriated to the use of the Government. I say that no Senator will insist upon that proposition, because it is contrary to every provision of the Constitution.

I was about to have read, Mr. President, as covering very nearly, if not completely, the decision of the court in the case of Klein, what I will send to the desk. I will ask the Senate to give their attention to the reading of this by the Secretary, because it really clears up every doubt on every point that can possibly be raised in this discussion. The argument in that case by the counsel of the Government covers everything possible, for they are generally very zealous in the defense of the public Treasury. The decision of the court was intended to eliminate every single doubt as to the right of these people to their property. I will ask the Secretary to read what I have marked on pages 3 and 4 of the report of the committee; and I hope that Senators will give their attention to that reading, because it really seems to me to make any further explanation unnecessary.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read as follows:

1. That it was not the intention of Congress, by the enactment of that statute, that the title to property seized under it should be divested from the loyal owners.

2. That the proceeds of the property should go into the Treasury without change of ownership.

3. That the same intention prevailed in regard to the property of owners who, though then hostile, might subsequently become loyal.

4. That it was for the Government itself to determine whether those proceeds should be restored to the owner or not.

5. That the President's proclamation of pardon and amnesty, with restoration of rights of property, and particularly that of July 4, 1868, was a decision on the part of the Government which decided affirmatively the right of all the owners of such property to the proceeds thereof in the Treasury; and the restoration of the proceeds became the absolute right of the persons pardoned.

6. And that "the Government constituted itself the trustee for those who by that act were declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled."

And in its opinion the court uses this language:

"That it was not the intention of Congress that the title to these proceeds should be divested absolutely out of the original owners of the property seems clear upon a comparison of different parts of the act.

"We have already seen that those articles which became by the simple fact of capture the property of the captor, as ordnance, munitions of war, and the like, or in which third parties acquired rights which might be made absolute by decree, as ships and other vessels captured as prize, were expressly excepted from the operation of the act; and it is reasonable to infer that it was the purpose of Congress that the proceeds of the property for which the special provision of the act was made should go into the Treasury without change of ownership. Certainly such was the intention in respect to the property of loyal men. That the same intention prevailed in regard to the property of owners who, though then hostile, might subsequently become loyal, appears probable from the circumstances that no provision is anywhere made for confiscation of it, while there is no trace in the statute book of intention to divest ownership of private property not excepted from the effect of this act otherwise than by proceedings for confiscation.

"It is thus seen that, except as to property used in actual hostilities, as mentioned in the first section of the act of March 12, 1863, no titles were divested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings. The Government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private property of noncombatant enemies from capture as booty of war; even the law of confiscation was sparingly applied. The cases were few indeed in which the property of any not engaged in actual hostilities was subjected to seizure and sale.

"We conclude, therefore, that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exceptions already noticed, was in no case divested from the original owner. It was for the Government itself to determine whether these proceeds should be restored to the owner or not. The promise of the restoration of all rights of property decided that question affirmatively as to all persons who avail themselves of the proffered pardon. * * * The restoration of the proceeds became the absolute right of the persons pardoned, on application within two years from the close of the war. It was, in fact, promised an equivalent. 'Pardon and restoration of political rights' were 'in return' for the oath and its fulfillment."

And then the court adds this strong language:

"To refuse it would be a breach of faith not less cruel and astounding than to abandon the freed people whom the Executive had promised to maintain in their freedom."

It will be observed that the court decides that the title to the proceeds of the property which come to the possession of the Government by capture or abandonment, with the exception of property used in actual hostilities, was in no case divested from the original owner.

The question therefore arises whether the Government ever determined that the proceeds of the sales of property under the captured and abandoned property acts which belonged to disloyal persons should be restored to them.

Whatever of occasion for dispute there may have been upon this question at one time, there seems to be none now.

Under the act of July, 1862, known as the confiscation act, the President was authorized at any time thereafter, by proclamation, to extend to persons who may have participated in rebellion in any State or part thereof pardon and amnesty, with such exceptions and at such time and on such conditions as he should deem expedient for the public welfare.

* * * * * * * * *

Finally, on the 4th day of July, 1868, a proclamation was issued by the President extending pardon and amnesty to all, with some exceptions, who had participated in the rebellion, with restoration to all rights of property, except in slaves, and on the 25th of December, 1868, without exception, unconditionally, and without reservation. No oath was required. * * * In the language of the Supreme Court before quoted:

"The promise of the restoration of all rights of property decided that question affirmatively as to all persons who availed themselves of the proffered pardon. * * * The restoration of the proceeds of captured and abandoned property became the absolute right of the persons pardoned, on application within two years from the close of the war."

Those who had failed to avail themselves of the proffered pardon extended by the proclamations containing conditions (if there were any such) were covered and embraced by the proclamation of July 4, 1868, which extended pardon and amnesty to all, without condition, with full restoration to property rights.

And the following, taken from the decision of the Supreme Court in Padelford's case, reported in 9 Wallace:

"In the case of Garland this court held the effect of a pardon to be such 'that in the eye of the law the offender is as innocent as if he had never committed the offense;' and in the case of Armstrong's foundry we held that the general pardon granted to him relieved him from a penalty which he had incurred to the United States. It follows that at the time of the seizure of the petitioner's property he was purged of whatever offense against the laws of the United States he had committed by the acts mentioned in the findings and relieved from any penalty which he might have incurred. It follows, further, that if the property had been seized before the oath was taken the faith of the Government was pledged to its restoration upon the taking of the oath in good faith. We can not doubt that the petitioner's right to the property in question at the time of the seizure was perfect and that it remains perfect notwithstanding the seizure.

"But it has been suggested that the property was captured in fact, if not lawfully, and that the proceeds having been paid into the Treasury of the United States, the petitioner is without remedy in the Court of Claims, unless proof is made that he gave no aid or comfort to the rebellion. The suggestion is ingenious, but we do not think it sound. The sufficient answer to it is that after the pardon no offense connected with the rebellion can be imputed to him. If in other respects the petitioner made the proof which under the act entitled him to a decree for the proceeds of his property, the law makes the proof of pardon a complete substitute for proof that he gave no aid or comfort to the rebellion.

"A different construction would, as it seems to us, defeat the manifest intent of the proclamation and of the act of Congress which authorized it. Under the proclamation and the act the Government is a trustee, holding the proceeds of the petitioner's property for his benefit; and having been fully reimbursed for all expenses incurred in that character loses nothing by the judgment, which simply awards to the petitioner what is his own."

But for the bar made by the statute of limitations of two years, it seems that all persons, loyal and those who had been disloyal, might prefer their claims to this property, and upon proof of their right to the property obtain the proceeds.

Pardon and amnesty relieved claimants of captured and abandoned property from proving their adhesion to the Government of the United States during the late war.

The following is the whole of the opinion of the court in Pargoud's case, 13 Wallace:

"We have recently decided in the case of Armstrong against the United States that the President's proclamation of December 25, 1868, granting pardon and amnesty unconditionally and without reservation to all who participated directly or indirectly in the late rebellion, relieves claimants of captured and abandoned property from proof of adhesion to the United States during the late civil war. It was therefore unnecessary to prove such adhesion or personal pardon for taking part in the rebellion against the United States. The judgment of the Court of Claims dismissing the petition is reversed."

Mr. CHANDLER. Will the Senator allow me to call attention at this point to the dissenting opinion in that case?

Mr. MONEY. Yes, sir.

Mr. CHANDLER. I notice that the opinion of the court was rendered by Chief Justice Chase, who, singularly enough, while he was Secretary of the Treasury, had gathered in the proceeds of the sale of all this cotton, and as Chief Justice decided they could all be taken out of the Treasury. He gathered the money in under a law which provided that it might be restored to the loyal owners, and he decided that it could be taken out of the Treasury by disloyal owners, so far as the court could make that decision.

Mr. MONEY. There were no disloyal owners at that time.

Mr. CHANDLER. The majority opinion was presumably concurred in by Justices Nelson, Swayne, Davis, Strong, Clifford, and Field. The dissenting opinion was delivered by Mr. Justice Miller, with whom concurred Mr. Justice Bradley, and it will be found in 13 Wallace, page 148. I will not ask to have the text of the dissenting opinion inserted in the Senator's speech.

Mr. MONEY. I thank you very much.

Mr. CHANDLER. But I am sure the Senator wants a full record to go to the country with his speech.

Now, Mr. President, if the Senator from Mississippi will allow me a word further——

Mr. MONEY. Yes, sir.

Mr. CHANDLER. While the decision of the majority was binding in that case, yet the minority opinion is good enough to enable me to insist that the statute of limitations shall not be removed at the end of a third of a century.

Mr. MONEY. I am quite sure the Senator would not differ from me as to what the court has said. The Senator simply differs from the court in its opinion in this case.

Mr. CHANDLER. I think Mr. Justice Miller's opinion is a much stronger opinion than the opinion of the majority.

Mr. MONEY. I have no doubt of that, because it agrees with your opinion.

Mr. CHANDLER. I agree with it entirely.

Mr. MONEY. It makes it very strong, indeed, in the mind of the Senator from New Hampshire when the opinion agrees with the opinion of the Senator.

Mr. CHANDLER. With my concurrence it is very much stronger. It is good enough, at any rate, Mr. President, in view of the fact that for over a third of a century this money has not been taken out of the Treasury. In an humble and in a subordinate way I aided in caring for this fund in 1865 and 1866, and I am going to try now and see that this little portion of what is left in the Treasury shall remain there. It seems that the whole amount was $31,000,000; that it cost $10,000,000 to get it into the Treasury, leaving $21,000,000. About $10,000,000 has already been paid out on judgments of the Court of Claims, leaving some $10,000,000; and the Senator expects to get $5,000,000 for the claimants for whom he now appeals.

If the Senator will allow me a few words more—and then I shall stop—it cost 300,000 human lives and six thousand millions of money to carry on the war for the Union. We seem to have got of all $10,000,000; and the South comes in now and wants $5,000,000 of that. It seems to me it would be a great deal more sensible at the end of the third of a century to let this little pittance of $5,000,000 be credited on the six thousand million dollars, and not now try to get the statute of limitations removed. I wish the Senator would let bygones be bygones, and let the Treasury have this little sum of money.

Mr. MONEY. Mr. President, certainly I have no doubt the Senator would be very much pleased to see this money remain in the Treasury, owing to the extreme poverty of this great Government. The Senator has no sympathy with the people who own this money which the Government holds as trustee; and it is a very singular fact that, having had a delay of justice for thirty-five years, we should have now a total denial of it by the Senator from New Hampshire or by anybody else. There was no laches on the part of the claimants in this matter. They have been asking all these years, and he who caused the delay should not complain of the lateness of the day.

Now, as to the singular fact that Mr. Justice Chase, who had been Secretary of the Treasury, delivered the opinion of the court which I have cited in 13 Wallace, I will say when he was Secretary of the Treasury he was an executive officer carrying out the will of Congress, which had passed the captured and abandoned property act; but he changed his character when he went upon the bench. He then had to decide what the act meant. The claimants who are now here are not disloyal, because they have been made whole and clean by the general amnesty proclamation.

It does not make a particle of difference whether this money is in a segregated fund or in a cotton fund or in the general fund. That is simply a trick of bookkeeping in the Treasury Department, and we all know it. The thing for you to consider is what the court said. Your reports show it, and every record in the Department shows it. To whom does the money belong? The courts say to those who are not disloyal, but who are loyal citizens of this country, and who have suffered for all these years because their own has been withheld, because you have refused to give them the tribunal which the courts said they ought to have to go to in order to show their right to have the proceeds of this property distributed.

If we have been doing wrong for thirty-five years, it is quite time we should turn around and retrace our steps and not say that we are going forever to be unjust to any man who is a loyal citizen to-day, whatever may have been his character before. We ought not to turn our backs upon the decision of the Supreme Court of the United States; and I am surprised that the Senator from New Hampshire should have made the argument he has. I sympathize very much with the distress of the Treasury of the United States. We are expending five or six hundred million dollars every year, and yet we want to keep this little $4,992,000 belonging to these loyal citizens in the South or to their heirs. Is that justice?

If the United States should assume the attitude in which the Senator from New Hampshire would put it, I could not better describe it than by quoting four words of Sallust's description of Catiline, in his history of the conspiracy, that he was a man profusus sui, appetens alieni—that is, a man prodigal of his own and greedy of the property of other people. I do not agree with the Senator from New Hampshire. I know that this great nation can not afford to occupy such an attitude as that.

This is a question of moral right. Can this great Government divest itself of its moral obligations? How scrupulous we are to pay all the debts we owe in dealing with the people who hold debentures of indebtedness issued to carry on that war. I want to tell the Senator from New Hampshire that my people pay taxes, too. The people of the South, these very disloyal owners, who for thirty-five years have had the courts shut against them, have been paying part of those taxes. Did they grumble? No. There has been no complaint whatever. These people have been living out of their own, because by the statute of limitations they could not go into court, although the court had decided that their rights were good and had decided that the money belonged to them; that it was never the intention at any time, even when the first act was passed, that they should be divested of their rights. All we want now is a tribunal which shall be open to them to distribute that fund. As shown by the Senator from New Hampshire, a large part, and very much the larger part, of that fund has been distributed to loyal owners, to men in the South who were loyal at the time the act was passed.

Senators, this is a matter that I do not think there can be any

great debate upon. I do not see how any man with a common sense of justice can deny longer that one of our own courts shall be open to our own citizens to plead a case which the Supreme Court of the United States has already prejudged in their favor. Somebody owns that money. It is not money which belongs to the United States; and it makes no difference what fund it may be in. It is but a mere trick of bookkeeping which will not avail you in attempting to get rid of the responsibilities as trustees in this case.

Who are the claimants? They are men stricken with age and young people who have grown up without the advantages they would have had if this court had been open to them.

But unfortunately, gentlemen, the court never made a decision that loyalty need not be proven, that the defense was wiped out by the general amnesty proclamation of July, 1868, until the act had expired. No longer could a claimant file his petition, and he was debarred not because he did not have the right to go, but because you sitting in this Chamber and the other refused to open the courts to him.

Now, I will ask my friend from New Hampshire, after having used other people's money for thirty-five years, do you not think it is time you should give us a chance to go into your own courts, after the Supreme Court of the United States has said it is their money and you are simply a trustee, and thus relieve yourself of the responsibility of any longer having the custodianship of money that does not belong to you?

Mr. CHANDLER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Mississippi yield to the Senator from New Hampshire?

Mr. MONEY. Of course.

Mr. CHANDLER. I do not consider it their money. It was booty.

Mr. MONEY. I understand that you disagree with the court.

Mr. CHANDLER. It was captured property, and the Congress provided what should be done with it. It provided that it should be sold and the proceeds put into the Treasury, and any man who brought his suit within two years and proved that he had not aided the rebellion could get what belonged to him; and no man was so wild in those days as to dream that the time would ever come when it would be advocated that a man might go and sue for that property and by proving that he had aided the rebellion get the proceeds of it. I am not willing that this booty of war, that captured property, shall at the end of this time be taken out of the Treasury by repealing a statute of limitations.

Mr. MONEY. I am sorry my friend has made that remark. My friend, I think, on a little opportunity would revert to the original savage. There is a strong sentiment in human nature to do that. I will get there myself some time. Originally when belligerents invaded territory they killed the people and took everything they had. Then as the people became civilized they began to save the lives and sell them as slaves, and then, as we progressed in the upward scale, we held a few of the distinguished people for ransom or a few as hostages, or something of that sort.

Then we declined to kill people, to make them slaves, or to hold them as hostages or for ransom, and we took their property. Then we said we would not take their property, that it was contrary to humanity and civilization; and that is the attitude occupied by every nation within the pale of Christendom to-day, and nobody knows it better than the Senator from New Hampshire. And yet he wants to go back some hundreds of years in the history of the human race and seize the property of noncombatants, of private persons, and make it the "spoil of his bow and spear" and take it home in triumph and keep it. These tribunals of last resort are of no account to him. His great mind takes in the situation, and he differs with the courts. He is controlled by dissenting opinions.

I do not blame him for that, because, as I said, I disagree with the courts sometimes myself; but still I yield to them. I believe their decisions must stand until they are reversed by the same authority. We know of no decision of the court that is not good and binding until the court itself has reversed it. But, now, here we are with the proceeds of this property. My friend said he does not believe it is their property, and of course he will vote according to his convictions notwithstanding the fact that this law said that there shall be standing in court for two years for the loyal owners, and then the proclamation that they are all loyal owners, and they shall be fully restored to their property. Does the Senator deny the force and effect of the general amnesty proclamation? I ask him that question.

Mr. CHANDLER. No, I do not. I will make my position distinctly understood. The Supreme Court made that decision, with the dissenting opinion. I think it was a wrong decision, but I acquiesced in it. If the owners of this property, of this cotton mainly, which was the great mainstay of the Confederacy, can get it, they may have it for all me, but I will not vote to remove the statute of limitations. I plant myself upon the statute of limitations, which has barred these men for all these years, and I say that if there ever was a case in the world where the statute of limitations should not be removed by Congress it is this. That is all my position.

Mr. MONEY. I understand the Senator's position very clearly, and of course I have no desire to ask him to abandon his well-considered grounds of objection, but nevertheless I appeal to other Senators who have not made up their minds so fixedly against the opinion of the court and so fixedly against every law of common justice, in my view of the case. I do not mean to impeach the good intentions or moral purpose and integrity of the Senator from New Hampshire, but his view is so different from mine that if I had his view, I would think I was proceeding upon that good old rule, that simple plan, "Let him take who hath the power and let him keep who can," which I do not think applies to this age of the world's development.

In 9 Wallace there is a case reported. Speaking now of this proclamation, the court says:

> Under the proclamation and the act the Government is a trustee holding the proceeds of petitioner's property for his benefit and, having been fully reimbursed for all expense incurred in that character, loses nothing by the judgment which simply awards to the petitioner what is his own.

It is difficult to use language any plainer and simpler than that. There can not be any doubt about what the court means.

Now, if there was a full restoration to all the rights of citizenship, how is it that there should be made an exception in this one case? What particular good reason is there except that you have the money? If you did not have it, you would not take it. There is not a man on the other side who would say so. If you did not have this money belonging to these claimants, who have been restored to their right of citizenship, including the right of property, there is not a man on the other side who would say take it, and yet some of you hesitate to restore it.

Mr. President, there is something in being right. It is worth something to a great nation to be right, and I want to say that one of the highest achievements in statesmanship is to keep the people whom you rule satisfied with your government; to keep them warm in their affections to your government. When the time of war comes, when the flag is insulted, when the territory is invaded, when sovereignty is questioned, then you call upon your people to rush to arms and to make all the sacrifices usual in cases of warfare, to protect the flag, to protect the integrity of the territory, to protect the national honor and its national good name. You want a people responsive to that sort of a call when the emergency comes, and you can not get it by taking what they are entitled to under the decisions of the greatest courts of the country.

It is a very light matter, you may think, but there is something in keeping the people satisfied with their Government; and the greatest trouble in this country is that the people are too easily satisfied with the Government, and that very fact is to-day liquefying the solid foundations of this Government. The people are too easily satisfied, and will not make inquiry into the manner in which their affairs are being administered and the character of the laws that are being passed. Eternal vigilance is the price of liberty, and we do not exercise it. I wish the people were more vigilant and less easily satisfied, at least, than they are to-day. There ought to be more inquiry into public acts.

This whole sum amounts to $4,982,000, according to the statement made by the Secretary of the Treasury. I consider that authoritative. It binds me. I am not particular about the amount, whatever it is. Whether it is $400,000, or $4,000,000, or $6,000,000, or $10,000,000 matters not. The right exists just the same. It is a difference of degree and not in kind. If they are entitled to one, they are entitled to two, if it is theirs and they can prove proprietorship. This will not impoverish this Government. Our income in three or four days amounts to enough to pay it. The income of the National Government will liquidate the whole and relieve everybody in the course of four days.

I think there ought to be at least a persuasive power in the fact that every committee in either House that has ever had this bill in its hands, or one like it, has always reported upon it favorably, and, I believe, without dissent, so far as I have observed. There may have been dissent, but I have not noticed it. At any rate it has always received the favorable report of the committee. It has been exhaustively examined, and I think one of the ablest reports that I have ever read made in either House of Congress was made from the Judiciary Committee by Judge Culberson some eight or ten years ago upon this matter, and the reading of that opinion with its citations of the decisions by the courts and its arrangement of facts should be convincing to every mind that desires to deal with it in a straightforward way. Of course, if there is a preadjudication, if gentlemen are determined that it shall not be, they will have the opportunity to record themselves so when the right time comes.

I now appeal to my friend the Senator from New Hampshire

to at least let this come to a decision, not to-day, for I want everybody to be heard who desires to be heard. I want every argument advanced against this that can be put there by the ingenuity of the sophist. Everything that can be said against it I am willing to hear with patience, but I do ask that we shall not continue, as we have done for the last twenty-five years, the policy of mere delay which has been used as a club with which to brain this bill whenever it has been presented to either House of Congress. It is entitled to a settlement. The people who are here pleading for their rights are entitled to their day in court and to a judgment.

Now, we are simply to do what? Simply to open one of our own tribunals, that our own citizens may go therein by petition and prove that they own certain property in the hands of the United States which the Supreme Court of the United States has declared to be a trust fund held for their benefit alone. In respect of transferring it from one fund to another, that cuts no figure in this case at all. It does not affect the right; it does not affect the equity and good conscience of this matter. And I take it the Senate will honestly decide, whatever its decision may be, not that the war cost a great deal, not that we have held this money for thirty-five years, but whether or not the United States is morally entitled to keep the money, notwithstanding the terms of the act under which the property was seized, notwithstanding the amnesty proclamation of the President, and notwithstanding numerous and uniform decisions of their Supreme Court. That is the question to be decided.

I know that we are more or less the creatures of experience, and when a man makes a speech in the Senate nobody can tell what the propelling force is. There is a certain thing that is called building up your fences, invented, I believe, by a distinguished Senator from Ohio, where the practice of building up fences is quite common. But nevertheless, in a case of this sort, where the right of citizenship is involved, where the court has established that right, if he can make the proof necessary that he is the person who owned the property, there is a right of that citizen that we can not disregard without violating our oath of office and our own consciences.

Of course I do not mean to impeach the conscience of anybody or his motives or purpose. If a man will not agree with the United States Supreme Court, if he believes that the length of time of possession gives a moral right and title to a thing, of course he will vote against this bill. I do not expect his support, but I do ask of you that this case shall some time be decided, and if anybody adverse to the measure proposes to make a speech upon it, I ask him as a personal favor, if he wants to do so, to do it at as early a date as his convenience will permit, considering his other engagements.

I want to say to the Senate now that I shall take every opportunity to press this matter to a vote. I do not want to be importunate with the Senate; I do not want to interfere with its regular order of business or with privileged motions, but I shall ask for the consideration of this measure, perfectly willing that discussion shall continue until the speakers have exhausted the subject and themselves; but at last, in the name of these people who have so long been denied a court in which they can prove their rights, I shall ask, in common justice to them, that you will come to a decision upon this matter and either approve or reject this measure.

I hope Senators will bear in mind that I have added to the bill a new section which absolutely excludes from this court and deprives of any standing before the court any claimant to any kind of property, cotton or otherwise, except those in the particular cases mentioned—the owners of private property seized under the act of March, 1863, by order of the Government, by its regularly authorized officers, sold, and the proceeds placed in the Treasury of the United States and decided by the court to be a trust fund, held by the United States for the benefit of these owners.

Mr. CHANDLER. Mr. President, I ask unanimous consent, without detaining the Senate to read it, that the dissenting opinion of the court in the case of United States *vs.* Klein may be inserted in the RECORD without reading.

Mr. MONEY. If that is to be put in, I shall be very glad to have the opinion of the court go along with it.

Mr. CHANDLER. I understood the Senator to put in all that he desired of the opinion of the majority of the court.

Mr. MONEY. I only put in some excerpts from the opinion, but probably when one reads in extenso the dissenting opinion he would like to see in extenso the decision of the court.

Mr. CHANDLER. If the Senator requests permission to insert the decision where he had the few sentences read, I shall not object.

Mr. MONEY. I ask, if the Senator is to put in the dissenting opinion, that I may put in the whole decision of the court.

Mr. CHANDLER. I ask that the minority opinion may be printed, to which I have called attention.

Mr. MONEY. I do not think I will put in all of the decision. There are some matters which of course would not be pertinent, and I will leave those out, in order not to encumber the RECORD any further than is necessary.

The PRESIDING OFFICER (Mr. KEAN in the chair). Is there objection to the request of the Senator from New Hampshire and the Senator from Mississippi? The Chair hears none, and the matter will be printed in the RECORD.

The dissenting opinion is as follows:

Mr. Justice Miller (with whom concurred Mr. Justice Bradley), dissenting:

"I can not agree to the opinion of the court just delivered in an important matter; and I regret this the more because I do agree to the proposition that the proviso to the act of July 12, 1870, is unconstitutional, so far as it attempts to prescribe to the judiciary the effect to be given to an act of pardon or amnesty by the President. This power of pardon is confided to the President by the Constitution, and whatever may be its extent or its limits, the legislative branch of the Government can not impair its force or effect in a judicial proceeding in a constitutional court. But I have not been able to bring my mind to concur in the proposition that, under the act concerning captured and abandoned property, there remains in the former owner, who had given aid and comfort to the rebellion, any interest whatever in the property or its proceeds when it had been sold and paid into the Treasury or had been converted to the use of the public under that act.

"I must construe this act, as all others should be construed, by seeking the intention of its framers, and the intention to restore the proceeds of such property to the loyal citizen, and to transfer it absolutely to the Government in the case of those who had given active support to the rebellion, is to me too apparent to be disregarded. In the one case the Government is converted into a trustee for the former owner; in the other, it appropriates it to its own use as the property of a public enemy captured in war. Can it be inferred from anything found in the statute that Congress intended that this property should ever be restored to the disloyal? I am unable to discern any such intent. But if it did, why was not some provision made by which the title of the Government could at some time be made perfect, or that of the owner established? Some judicial proceeding for confiscation would seem to be necessary if there remains in the disloyal owner any right of interest whatever. But there is no such provision, and unless the act intended to forfeit absolutely the right of the disloyal owner, the proceeds remain in a condition where the owner can not maintain a suit for its recovery, and the United States can obtain no perfect title to it.

This statute has recently received the attentive consideration of the court in two reported cases.

In the case of The United States *vs.* Anderson (9 Wallace, 65) in reference to the relation of the Government to the money paid into the Treasury under this act and the difference between the property of the loyal and disloyal owner, the court uses language hardly consistent with the opinion just read. It says that Congress, in a spirit of liberality, constituted the Government a trustee for so much of this property as belonged to the faithful Southern people, and while it directed that all of it should be sold and its proceeds paid into the Treasury, gave to this class of persons an opportunity to establish their right to the proceeds. Again, it is said that "the measure, in itself a great beneficence, was practically important only in its application to the loyal Southern people, and sympathy for their situation doubtless prompted Congress to pass it."

These views had the unanimous concurrence of the court. If I understand the present opinion, however, it maintains that the Government, in taking possession of this property and selling it, became the trustee of all the former owners, whether loyal or disloyal, and holds it for the latter until pardoned by the President or until Congress orders it to be restored to him.

The other case which I refer to is that of United States *vs.* Padelford (9 Wallace, 531). In that case the opinion makes a labored and successful effort to show that Padelford, the owner of the property, had secured the benefit of the amnesty proclamation before the property was seized under the same statute we are now considering. And it bases the right of Padelford to recover its proceeds in the Treasury on the fact that before the capture his status as a loyal citizen had been restored, and with it all his rights of property, although he had previously given aid and comfort to the rebellion.

In this view I concurred with all my brethren. And I hold now that as long as the possession or title of property remains in that party the pardon or the amnesty remits all right in the Government to forfeit or confiscate it. But where the property has already been seized and sold, and the proceeds paid into the Treasury, and it is clear that the statute contemplates no further proceeding as necessary to divest the right of the former owner, the pardon does not and can not restore that which has thus completely passed away. And if such was not the view of the court when Padelford's case was under consideration I am at a loss to discover a reason for the extended argument in that case, in the opinion of the court, to show that he had availed himself of the amnesty before the seizure of the property. If the views now advanced are sound, it was wholly immaterial whether Padelford was pardoned before or after the seizure.

Mr. WARREN. Referring to the matter now before the Senate, it develops that there will be some differences of opinion, and that those who favor the general provisions of the bill will seek to amend it. I assume that Senators will all require the latest information that we have, and I ask unanimous consent to have printed in the RECORD the latest letters, including a circular from the Treasury Department referring to this subject-matter. I desire that it may be printed in the RECORD and also as a separate miscellaneous document.

Mr. MONEY. Would it not be well also to put in the circular letter?

Mr. WARREN. I include that.

The PRESIDING OFFICER. The Senator from Wyoming asks unanimous consent that the papers which he has submitted be printed as a document and also in the RECORD. Is there objection? The Chair hears none.

The papers referred to are as follows:

ABANDONED AND CAPTURED PROPERTY ACT.

UNITED STATES SENATE, COMMITTEE ON CLAIMS,
*Washington, D. C., March 22, 1900.*

DEAR SIR: As there is a bill pending in Congress to revive the abandoned and captured property act of March 12, 1863, will you please give this committee the information called for by the following questions?

What amount in the aggregate was paid into the Treasury under said act?

What amount in the aggregate has been paid or returned to claimants to said fund?

And what disposition has been made of the balance?

By doing so you will oblige,

Very respectfully, yours,

FRANCIS E. WARREN.

The SECRETARY OF THE TREASURY,
*Washington, D. C.*

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
*Washington, D. C., March 28, 1900.*

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, in which you say that "there is a bill pending in Congress to revive the abandoned and captured property act of March 12, 1863," and you request that your committee be given the information called for by the following questions:

"What amount in the aggregate was paid into the Treasury under said act?

"What amount in the aggregate has been paid or returned to claimants to said fund?"

In answer to the first question, I have to state that the Register of the Treasury reported to the Secretary, February 4, 1888, that the receipts of the Treasury from captured and abandoned property were $26,887,584.39. There have been no receipts since that date.

It is proper to add that included in this amount are the profits on cotton purchased and sold by Treasury agents under the eighth section of the act of July 2, 1864 (13 Stat., 377), $3,444,715.14, and the premium on the gold for which this cotton was sold, $2,571,090.25, making the sum of $6,015,805.39, which was credited to the captured and abandoned property fund, although not a dollar of this amount was derived from the seizure and sale of captured and abandoned property.

In order, therefore, to arrive at the true amount derived from the sale of captured property and covered into the Treasury, this profit on the purchase of cotton under the above act should be deducted from the $26,887,584.39, which gives $20,871,779 as the true amount covered into the Treasury from the sale of captured and abandoned property.

It is also proper to add that this sum was derived from the sale of captured vessels, miscellaneous property, and cotton, and from rents, etc.

In answer to the second question I have to state that there has been paid out of this fund $10,888,314.27, as will appear from Circular No. 4, of January 9, 1900 (copy herewith). Nearly the whole of this amount was paid on cotton claims. Deduct it from the $20,871,779 found above, and there is found to be $9,983,464.73 of the fund which has not been paid out.

But you will notice from the circular that $4,991,114.81 were derived from sources other than the sale of cotton, thus leaving only $4,992,349.92 as representing the balance of the fund derived from the sale of captured and abandoned cotton.

Your attention is called to the statement in the circular that this sum about equals the amount in the fund derived from the sale of cotton which was captured after June 30, 1865, and which had been sold to the Confederate government, as shown by the Confederate records now in this Department.

Your attention is called also to Senate Ex. Doc. No. 56, Fortieth Congress, second session, page 28, from which you will see that the Secretary of the Treasury released, under the act which the bill proposes to amend, 9,556 bales of cotton and allowed claims and refunded $2,210,476.96.

You will see on page 4 of the circular a statement of the provisions of law made for the relief of all persons who claimed that their property had been unlawfully taken.

I have to state also that this captured and abandoned property fund was all carried into the general fund of the Treasury under the joint resolution approved March 30, 1868.

Respectfully,

L. J. GAGE,
*Secretary.*

Hon. FRANCIS E. WARREN,
*Chairman Committee on Claims, United States Senate.*

[Department Circular No. 4, Miscellaneous Division, 1900.]

INFORMATION RELATIVE TO COTTON AND CAPTURED PROPERTY CLAIMS.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
*Washington, D. C., January 9, 1900.*

*To whom it may concern:*

A statement originating in Washington that there is $15,000,000 in the Treasury belonging to the cotton fund has been extensively copied in the public press, especially in the South. This publication has undoubtedly caused parties, or their descendants, who lost cotton to make inquiries. The statement is erroneous and misleading.

To correct this statement a brief review of the transactions of the Treasury would seem proper, that parties interested and the public may not be misled by unauthorized and misleading publications.

By an act approved March 12, 1863 (12 Stat., 821), the Secretary of the Treasury was authorized to appoint special agents to collect captured and abandoned property in the States in insurrection. Nine districts were established and an agent appointed for each. All the property collected by them that was not returned to the owners was sold and the proceeds reported to the Secretary of the Treasury. The records show that in many cases the Secretary ordered the property collected by the agents to be restored to the owners before sale, and in other cases he returned the proceeds derived from the sale to the owners.

The Treasurer of the United States was appointed a special agent, and until March 30, 1868, was the custodian of the funds. It was treated as a trust fund under the control of the Secretary.

PROCEEDS COVERED INTO THE TREASURY.

By a joint resolution approved March 30, 1868 (15 Stat., 251), it was provided that all the moneys derived from the sale of captured and abandoned property (which included cotton), "which have not already been actually covered into the Treasury shall immediately be paid into the Treasury of the United States."

Since the passage of the joint resolution all the funds derived from the sale of captured and abandoned property have been covered into the Treasury, from which it can not be taken without an appropriation by Congress. There is, therefore, no "cotton fund" in the Treasury, carried on the books as such, nor as the "captured and abandoned property fund."

AMOUNT DERIVED FROM CAPTURED AND ABANDONED PROPERTY COVERED INTO THE TREASURY.

February 4, 1888, the Register of the Treasury reported to the Secretary that the receipts of the Treasury from captured and abandoned property were $26,887,584.39, and noted that in this amount was included $2,571,090.75 derived from premium on the sale of gold coin which had been received from the sale of cotton purchased by Treasury agents, and which was sold for gold. There have been no further amounts received from this source since the Register's report.

SOURCES FROM WHICH THE CAPTURED AND ABANDONED PROPERTY FUND WAS DERIVED.

There seems to be a general impression in the country, especially among those who claim that their cotton was taken, that the captured and abandoned property fund was all derived from the sale of cotton. It is important, therefore, to state some of the sources other than cotton from which the fund was derived.

By the terms of section 8, act of July 2, 1864 (13 Stat., 377), the Secretary of the Treasury was authorized to purchase cotton, and use the funds then already received from the sale of captured property, and not then covered into the Treasury, to pay for the cotton purchased.

The profits on this transaction were $3,444,715.14. As the cotton purchased was sold for gold and the premium on the gold (which was sold) was $2,571,090.25, the captured and abandoned property fund was increased by the transaction $6,015,805.39, which amount is included in the $26,887,084.39, supra.

SOME OTHER SOURCES OF THE FUND.

The report of the Secretary of the Treasury, made to Congress May 11, 1868 (Senate Ex. Doc. No. 56, Fortieth Congress, second session), states the sources from which the receipts for captured and abandoned property were derived to that date, when the amount covered into the Treasury was $25,257,931.62. This report shows that there was received from other sources than the sale of cotton—

| | |
|---|---|
| For miscellaneous property | $1,309,650.69 |
| Rents | 613,284.96 |
| Sale of captured vessels, etc | 1,438,526.39 |

Since this report was made there has been covered into the Treasury $1,629,652.77, which was derived from other sources than the sale of cotton taken from individuals. This sum, added to the $25,257,931.62, makes the $26,887,584.39 reported by the Register in 1888.

AMOUNT OF THE FUND COVERED INTO TREASURY THAT WAS RECEIVED FROM THE SALE OF INDIVIDUAL COTTON.

To determine the amount of the captured and abandoned receipts covered into the Treasury that were derived from the sale of cotton belonging to individuals there must be deducted from the total amount received from captured and abandoned property the amounts received from other sources:

| | | |
|---|---|---|
| Amount received and covered into the Treasury | | $26,887,584.39 |
| Deduct items found above— | | |
| Profits on cotton purchased | $3,444,715.14 | |
| Premium on gold | 2,571,090.25 | |
| Miscellaneous property | 1,309,650.69 | |
| Rent | 613,284.96 | |
| Sale of captured vessels, etc | 1,438,526.39 | |
| Amount paid in since May 11, 1868 | 1,629,652.77 | |
| | | 11,006,920.20 |
| Leaving receipts from sale of individual cotton | | 15,880,664.19 |

Included in the amount is $4,886,671 received from the sale of cotton seized after June 30, 1865, which will be noticed further along in this report.

TREASURY PAYMENTS FOR COTTON OUT OF THIS FUND.

By the terms of section 3 of the act approved March 12, 1863 (12 Stat., 821), it was provided that "any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims."

It was decided officially and afterwards judicially that the rebellion closed August 20, 1866, so that the parties had until August 20, 1868, to file their claims in the Court of Claims. Under this act a large number of claims for cotton were filed in that court and judgments rendered. It appears from the report of the Register of the Treasury, February 4, 1888, that the judgments paid amounted to $9,864,300.75. Since that date there have been paid on judgments rendered by the court and under private acts of Congress $520,700.18.

Again, under section 5, act of May 18, 1872 (17 Stat., 134), the Secretary of the Treasury returned to the owners of cotton seized unlawfully after June 30, 1865, the sum of $195,896.21.

It will thus be seen that large sums have been paid on claims for cotton under the provisions made by Congress, and these amounts should be deducted from the sum derived from its sale, in order to determine what part of the fund covered into the Treasury under the joint resolution of March 30, 1868, represents the balance derived from the sale of individual cotton.

STATEMENT.

| | | |
|---|---|---|
| Amount covered into the Treasury derived from sale of individual cotton | | $15,880,664.19 |
| From this amount deduct payments judgment, Court of Claims under act March 12, 1863, to February 4, 1888 | $9,864,300.75 | |
| Judgments of court since February 4, 1888, and private acts of Congress | 520,700.18 | |
| Disbursed as expenses under section 3, joint resolution March 30, 1868, and subsequent acts | 242,140.34 | |
| Judgments against Treasury agents under act of July 27, 1868 | 65,276.79 | |
| Claims allowed by the Secretary under section 5, act of May 18, 1872 | 195,896.21 | |
| | | 10,888,314.27 |
| | | 4,992,349.92 |

There is, then, only $4,992,349.92 left in the Treasury which was received from the sale of captured and abandoned cotton.

COTTON SEIZED AFTER JUNE 30, 1865.

Reference has been made above to section 5, act of May 18, 1872, which authorized the Secretary of the Treasury to return the proceeds derived from cotton seized after the 30th of June, 1865.

It appears from a report of the Secretary of the Treasury (Senate Ex. Doc. 23, page 58, Forty-third Congress, second session) that the proceeds derived from the sale of cotton seized unlawfully after—

| | |
|---|---|
| June 30, 1865, amounted to | $4,886,671.00 |
| And of this amount there was returned under act of May 18, 1872 | 195,896.21 |
| Leaving covered into the Treasury from this source | 4,690,774.79 |

There were 1,336 claims filed under the act of 1872 for 136,000 bales, of the estimated value of $13,600,000. (Letter of Secretary of Treasury, Ex. Doc. H. R., Forty-fifth Congress, second session, page 36.) As before stated, only $195,896.21 was allowed by the Secretary. The claims were nearly all disallowed, for the reason that the Confederate records in this division showed that the claimants had sold the cotton to the Confederate government, and it was not therefore individual cotton when seized after June 30, 1865, but was the property of the Confederate government.

It will be noticed that the amount received from the sale of this Confederate cotton about equals the amount of the proceeds of captured cotton which remained after the payments of the judgments, etc., as above stated.

It follows, therefore, that the balance of the fund in the Treasury received from the sale of cotton represents the proceeds of the sale of cotton that belonged to the Confederacy.

LAWS FOR THE RELIEF OF THE OWNERS OF CAPTURED AND ABANDONED PROPERTY.

It will be seen from the foregoing that ample provision was made by law for all persons who claimed that their property was unlawfully taken.

1. Until the fund was covered into the Treasury in 1868 the Secretary of the Treasury could return the property or the proceeds in all cases where a claim was substantiated by proper evidence.

2. The Court of Claims had jurisdiction for all claims filed before August 20, 1868.

3. The act of 1872 provided that claims for cotton could be filed with the Secretary of the Treasury until November, 1872.

CONFEDERATE COTTON RECORD.

The miscellaneous division has charge of all the Confederate cotton records, some of which were captured and others purchased. It appears from these records that the Confederate authorities burned much cotton to prevent it from falling into the hands of the Union forces. (See report of A. Roane, chief of the Confederate produce loan office to the Confederate secretary of the treasury, published in Mis. Doc. 190, H. R., Forty-fourth Congress, first session, p. 39. See also report of De Bow, general Confederate cotton agent for Mississippi and part of Louisiana, that cotton was destroyed by Confederate scouts.) Among the Confederate treasury records is a book containing the names of persons who had made claims on the Confederate treasury for cotton destroyed by their own forces, among whom was the President of the Confederacy, who made claim for 200 bales burned.

CLAIMS FILED WITH THE COMMISSIONERS OF CLAIMS, COMMONLY CALLED THE SOUTHERN CLAIMS COMMISSION.

By the terms of section 2 of an act approved March 3, 1871 (16 Stat., 524), three commissioners were appointed "to receive, examine, and consider the justice and validity of such claims as shall be brought before them of those citizens who remained loyal adherents to the cause and the Government of the United States during the war, for stores or supplies taken or furnished during the rebellion for the use of the Army of the United States in States proclaimed as in insurrection against the United States."

This commission came to be known as the "Southern Claims Commission." It expired by limitation of law March 10, 1880, when its last report to Congress was made. It appears from this report that there were filed with the commission 22,298 claims, amounting to $60,258,150.44, and of this amount there was allowed $4,636,920.69.

Claimants had eight years after the passage of the law to file and perfect their claims, Congress having extended from time to time the life of the commission. It appears from the report that in 5,250 cases no evidence whatever was taken by the claimants, and their claims became barred by section 5 of the act of June 15, 1878 (20 Stat., 566). These claims are not in this Department, but remain in the files of the House of Representatives.

The creation of this commission is another evidence, in addition to those before noted, of the liberality of Congress in providing a tribunal to adjudicate the claims of loyal citizens whose property was taken by the Union forces in the States in insurrection.

The Treasury Department has now no authority to consider and settle cotton and war claims, and relief, if any, must be afforded by Congress.

H. A. TAYLOR, *Assistant Secretary.*

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UNITED STATES SENATE, COMMITTEE ON CLAIMS,
*Washington, D. C., April 16, 1900.*

DEAR MR. SECRETARY: S. 602, to revive and amend "An act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States, and acts amendatory thereof," presented by Senator DAVIS, is liable to come up at any moment for consideration.

In order to act advisedly upon this bill, I desire, for my own guidance and for the use of the Senate, certain specific data or information, and must appeal to you to have the same collated and reported at the earliest possible practicable day. You will see that this bill relates to all captured and abandoned property of all kinds, cotton as well as all other property.

Please therefore state the aggregate amounts received from the sales of all kinds of property under the following or other proper headings:

1. Aggregate amount of the proceeds of the sales of all kinds of captured and abandoned property covered into the Treasury; then, under the heading "Cotton," the aggregate amount of all sales of captured and abandoned cotton the proceeds of which were covered into the Treasury; and under the other appropriate headings the aggregate amount of the proceeds of the sales of captured vessels, rents, and other kinds of such captured and abandoned property the proceeds of which were covered into the Treasury.

Then under the head of disbursements or payments from such fund state, under the head of "Cotton," all payments specifically, including profits on cotton purchased, premium on gold, judgments, private acts, judgments against Treasury agents, claims allowed by Secretary, expenses, etc., refunds by the Secretary of the Treasury, and explain the release of 9,556 bales of cotton by the Secretary of the Treasury, as stated in your letter of March 28, 1900, to me, whether the value of this cotton was included in the amounts of the cotton fund covered into the Treasury or was released in kind and returned to claimants, and especially the amount of the captured and abandoned cotton; proceeds covered into the Treasury which was shown by the books of the Confederacy to have been bought for the Confederate government, which is an important item.

And under proper headings the disbursements and payments from the other proceeds arising from sales of other property than cotton, specifying each as far as practicable—judgments, private bills, allowances by the Departments, by the Southern Claims Commission, etc. This statement should show as accurately as possible the exact balance in the Treasury from all sales of all captured and abandoned property now in the Treasury and from which any and all judgments which might be rendered under the pending bill could be paid after all proper deductions have been made for all disbursements, payments, expenses, etc., heretofore made to this date.

With such information and data intelligent action can be taken.

Please advise me of receipt and about the time which will be necessary to enable you to make the report indicated, and oblige.

Sincerely, yours,

———.

Hon. LYMAN GAGE,
*Secretary of the Treasury, Washington, D. C.*

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TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
*Washington, D. C., April 21, 1900.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, requesting data and information relative to the captured and abandoned property transactions of this Department for use in the consideration of Senate bill 602.

A number of very full reports have been made by former Secretaries of the Treasury on the subject, and a reference to them will doubtless furnish nearly, if not all, the data and information that you request.

To make a reexamination of all the transactions and accounts of the Treasury agents engaged in collecting and selling captured and abandoned property would require the services of a number of clerks for several months.

February 4, 1888, the Register of the Treasury reported to the Secretary that the receipts from captured and abandoned property were $26,887,584.39, of which amount $2,571,090 75 was derived from premium on gold coin.

On page 1 of House Miscellaneous Document No. 190, Forty-fourth Congress, first session, you will find the names of the persons who paid into the Treasury $24,251,269.93. Since the date of that report there has been paid in $65,610.03 by different agents. Add to these amounts the premium on gold, and the total is the same amount reported by the Register.

May 11, 1868, Secretary McCulloch made an exhaustive report—Senate Ex. Doc. No. 55, Fortieth Congress, second session. You will find on page 52 a statement of the entire receipts and disbursements of agents of the Treasury.

At that date the total amount covered into the Treasury is stated at $25,257,931.62, which is $1,629,652.77 less than the amount reported by the Register in 1888, but which was received between the two dates.

You will notice, on page 53 of the report, that $6,468,657.28 of the receipts were in gold, and that the premium on this gold was $2,571,090.95.

For data as to the amount of profit realized on cotton purchased by Treasury agents and sold under the act of July 2, 1864 (13 Stat., 377), I refer you to page 3 of House Miscellaneous Document No. 190. You will see that the amount advanced out of the fund was $2,465,833.69, and the amount returned from sales of the cotton purchased was $5,910,549.13, thus showing that the profits were $3,444,715 44.

Add this to the premium on gold, and it is found that $6,015,805.39 was credited to the fund from these two sources, which amount is included in the $26,887,084.39.

It is supposed that the bill has in view principally the payment of cotton claims, and if such is the purpose it would seem that Circular No. 4 of this Department furnishes the data which should be considered in the discussion of the question.

The amount of cotton purchased by the Confederate government may be of interest to your committee in considering the question whether the amount of the fund which represents the sale of cotton seized after June 30, 1865, should now be paid to cotton claimants.

On page 37 of Mis. Doc. 190 you will see that the agent of the Confederacy reports the total amount purchased as 430,724 bales, costing $34,525,209.14.

He says that the cotton was "scattered principally on the plantations in the several States," where the larger portion, on October 30, 1864, was still located.

When the 1,336 claims were filed under the act of 1872, the Confederate records were in possession of this Department, and it was found that most of the claims were for cotton that had been sold to the Confederacy. It would seem, from the report of the Confederate agent, that the parties had received pay for it.

You request an explanation of the release of 9,556 bales of cotton referred to in Department letter of the 28th ultimo. Under the act of 1863 the Secretary of the Treasury released cotton when he was satisfied that it should not have been seized, and if the cotton had been sold he refunded the proceeds.

On page 53 of Senate Ex. Doc. No. 56 you will see that he refunded $2,460,821.60.

Your attention is called to the statement in Circular No. 4 of the provision made by law for all persons who claimed that their property was unlawfully taken, viz:

1. Until the fund was covered into the Treasury, in 1868, the Secretary of the Treasury could return the property or the proceeds in all cases where a claim was substantiated by proper evidence.

2. The Court of Claims had jurisdiction for all claims filed before August 20, 1868.

The act of 1872 provided that claims for cotton could be filed with the Secretary of the Treasury until November, 1872.

Respectfully,

L. J. GAGE,
*Secretary.*

Hon. FRANCIS E. WARREN,
*Chairman Committee on Claims, United States Senate.*

MEMORIAL ADDRESSES ON REPRESENTATIVE BAIRD.

Mr. MCENERY. Mr. President, I desire to give notice that on Thursday, May 10, at 3 o'clock, I will call up the House resolutions notifying the Senate of the death of the Hon. SAMUEL T. BAIRD, late a Representative in Congress from Louisiana, in order that appropriate resolutions may be presented to the Senate and considered.

JOHN F. CRAWFORD.

Mr. MCCOMAS. I desire to call up the West Virginia election case.

Mr. WARREN. Will my friend the Senator from Maryland yield to me for a moment that I may call up a House pension bill? It is very short.

Mr. MCCOMAS. I yield for that purpose.

Mr. WARREN. I desire to call up the bill (H. R. 7599) granting an increase of pension to John F. Crawford.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to place on the pension roll the name of John F. Crawford, late a private of Company B, One hundred and twenty-third Regiment Indiana Volunteer Infantry, and to pay him a pension of $40 per month in lieu of that he is now receiving.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

SENATOR FROM WEST VIRGINIA.

Mr. MCCOMAS. I desire to call up the resolution in the case of the Senator from West Virginia.

The Senate resumed the consideration of the following resolution, reported by Mr. MCCOMAS from the Committee on Privileges and Elections March 12, 1900:

*Resolved*, That NATHAN B. SCOTT has been duly elected a Senator from the State of West Virginia for the term of six years, commencing on the 4th day of March, 1899, and that he is entitled to his seat in the Senate as such Senator.

The PRESIDING OFFICER. The question is on agreeing to the motion submitted by the Senator from Alabama [Mr. PETTUS], which will be stated.

The Secretary read as follows:

That the resolution and report be recommitted to the Committee on Privileges and Elections, with instructions to investigate the case fully by all legal evidence offered to it.

Mr. McCOMAS. I will yield to the junior Senator from Alabama if it is his desire to proceed.

Mr. PETTUS. I understood that the senior Senator from West Virginia had some remarks to make on this subject.

Mr. McCOMAS. I was not aware that the senior Senator from West Virginia desired to address the Senate. I understand that he does not desire to proceed.

The PRESIDING OFFICER. The question is on agreeing to the resolution of the Senator from Alabama.

Mr. CARTER. On that I ask for the yeas and nays.

Mr. PETTUS. Does the senior Senator from West Virginia decline to make any further remarks?

Mr. McCOMAS. The senior Senator from West Virginia tells me he has no desire to make any remarks at this time.

Mr. PETTUS. I will proceed now, Mr. President.

I do not propose this morning to enter again into a discussion of this case in extenso. My main purpose is to get before the Senate a mistake, as I conceive it, made by the Senator from Maryland [Mr. McCOMAS] and the Senator from New Hampshire [Mr. CHANDLER] in what they had to say. I would have attempted to correct it yesterday if I had heard it with any distinctness. I happened to be out of the Chamber when a portion of it was said. I will send to the desk and ask the Secretary to read the parts of the RECORD with the cross marks.

The Secretary read as follows:

[Congressional Record, April 26, 1900, pages 4709-10.]

Mr. McCOMAS. * * * In respect of vague suggestions of wrongdoing by A or B, we asked that counsel should proffer something which would be proved by somebody, and counsel failed to make any proffer of any evidence they might offer to sustain this statement; and when they were not clear, distinct, and specific, when they declined to make any proffer whatever, the committee, with almost unanimity, said there was nothing to investigate in respect to those matters.

Mr. PETTUS. Now, from the right-hand column, the remarks made by the Senator from New Hampshire [Mr. CHANDLER].

The Secretary read as follows:

Mr. CHANDLER. * * * Full argument was made on those conditions; and after argument had been fully heard and the counsel had stated everything which they knew or imagined by any possibility could be proven to the committee, the committee concluded to make no further investigation, but to decide the case, as they have decided it, with one dissenting voice, upon the testimony which was then before the committee.

Mr. PETTUS. Mr. President, the proceedings of that occasion happened to be in writing, taken down by your stenographers, and I have them before me. I propose to read from the minutes taken by the stenographers some extracts, to show that those statements are entirely mistaken. In the first place, there was a memorial presented, and in that memorial were contained copies of the depositions which had been taken in that case, and the depositions themselves were tendered to the committee and in the hands of the committee. Then Mr. Welles, who was of counsel for the contestants, after making a great many other statements as to what could be proved, said:

We want to prove those propositions. We want to prove this agreement—

Speaking of the agreement between the 5 Republicans and the 5 Democrats.

We want to prove those propositions. We want to prove that this agreement and the convention which was held under the agreement, and that all of this proceeding, including the temporary suspension of Kidd's vote (because he was not suspended from the senate, but simply suspended from voting), was a part of a fraudulent conspiracy, and that there was a condition of affairs existing in West Virginia that was as bad as the condition of affairs which unfortunately confronted the United States Senate in the days of reconstruction in the South. We want to show those facts. Those facts are not before this committee. Those are the facts on which we want some decision of the committee outlining what we can and can not prove. We do not believe this committee will decide that we can not go into motives, because that would shut out the investigation of all cases of fraud.

Now, further on in the proceedings of the same day:

The CHAIRMAN—

That is his deposition—

I have Morrow's and Fisher's. Those are referred to at page 131.

"The attorney-general's argument," in the Logan and Via case, "consisted of such ill-tempered declarations as that he charged that the committee had already agreed to decide against Via and in favor of Logan, and if they were to carry out this prearranged plan the committee need not be surprised 'to see blood flow in the capitol' on the next day, because plans had been formulated looking to the preventing of the seating of Logan, even at the cost of shedding of blood."

Morrow says the same thing. He was chairman of the special committee.

Mr. WELLES. I was mistaken about McKinney; he was not there.

The CHAIRMAN. Morrow says:

"Instead of attempting to remove this supposed prejudice by reason, he attempted to coerce the committee by threats of what would happen in case they acted in accordance with the dictates of judgment and conscience and contrary to his demands. He said, in effect, that they need not be surprised if upon the following morning blood ran in the capitol, and asserted that the plans were completed, in case the committee acted according to the evidence and not according to the intention, to organize the House of delegates that would be subservient to his will, no matter what the consequences might be."

That is Morrow, on page 70; and the request is here made by you that we take that testimony.

Senator HOAR. If you mean to say that your offer of proof is an offer to prove by witnesses what is here set forth in affidavits, that is an answer to my question.

Mr. WELLES. Our proposal is to prove all these declarations made in the memorial, and our offer of proof is not confined at all to the ex parte affidavits that we have filed. Of course, the Senate committee will very readily see that we could not ourselves subpœna the governor of the State of West Virginia, or these men. This committee can do it.

The CHAIRMAN. What deposition did you refer to besides those I have read?

Mr. WELLES. I was mistaken, Senator; I thought that Mr. McKinney had reference to that matter; but he did not.

The CHAIRMAN. Here are the affidavits which have been lodged with the committee.

Mr. WELLES. Yes; those are the ex parte affidavits. We want to go into that case simply this far: We are willing to be limited by anything the committee may deem proper in the way of the limitation of evidence. We have no desire to go into any long-continued investigation any further than the committee may deem it necessary to do so in order to get a full understanding of this case.

We are willing to make a statement of just the points we want to prove, the point of threats, the point of intimidation, the point of conspiracy and fraud throughout, and only to call those witnesses. We would want some witnesses whose affidavits we have not got, which we did not file and could not yet have filed. We want Republican affidavits. We want members of the State government over there. Upon that point we can only ask for some ruling, under any arrangement the committee may suggest, as to whether or not the committee wishes to go into the evidence in the case, and how far the committee wishes to go into it. We are perfectly willing to outline precisely what we can prove, or what we believe we can prove, by Republican and Democratic witnesses.

Now, that thing went on and it was talked about from time to time, and it finally wound up in this way:

The CHAIRMAN. The committee will now have a session with closed doors.

Mr. WELLES. Will the committee let us know its decision as soon as possible as to when we shall put in the evidence, if the committee decides to take evidence?

The CHAIRMAN. We shall let you know any conclusion we reach. We may not take the subject up to-night, but we shall let you know promptly any conclusion that we may reach.

Mr. WELLES. Does the committee want our statement filed as to what we want to prove?

The CHAIRMAN. You want to prove what is in these affidavits. We shall consider everything that is here as bearing upon the question.

The hearing (at 4 o'clock and 45 minutes p. m.) was closed.

I did not read the balance, because it was mainly a discussion of the questions in the cause.

Mr. MORGAN. Will my colleague allow me to inquire what paper it is he is reading from?

Mr. PETTUS. This is the minute made by the official stenographer of the proceedings of the committee.

Mr. MORGAN. Is that a part of the report now before the Senate?

Mr. PETTUS. I do not know whether it is or not. It has not been specifically mentioned that I know of. But it is a part of the official proceedings of the committee reduced to writing by the stenographer at the time, and printed by order of the committee.

Mr. MORGAN. If my colleague will allow me a moment, I had not supposed that there was any official paper here connected with the report except the report itself, the report of the committee and the report of the minority. Those papers have been upon our desks here: we have had access to them; and while that paper has been once or twice referred to in the debate here I had not supposed that it had any official connection with the report of the committee.

Mr. McCOMAS. It is the report of the hearing before the committee.

Mr. MORGAN. Is it a part of the report of the committee?

Mr. McCOMAS. It is the stenographic report of the arguments of counsel made before the committee. It is not a part of the report of the committee.

Mr. MORGAN. Is it a part of the record in this case?

Mr. McCOMAS. It is the report of the oral arguments in this case upon the record in the case—the arguments of counsel, with interruptions by Senators of the committee.

Mr. MORGAN. That paper, as I understand it, brings out the fact that a number of affidavits were offered there and were acted upon by the committee. Now, if that is a part of the record in this proceeding upon which the Senate is now acting, I desire, of course, to examine it in connection with the report. If it is a private paper, one intended for the information only of the members of the committee, of course we have not got anything to do with it. Yet it is referred to here and quoted from on both sides of the Chamber, by the minority and by the majority, and I merely want to know whether that paper now is to be considered as a part of the report in this case.

Mr. McCOMAS. I will say to the Senator that it is simply a stenographic report of the arguments of counsel upon the record in the case. It is no part of the report. It could not be any part of the report. We do not incorporate the arguments of attorneys to persuade the minds of the committee in the conclusions and findings of the committee.

Mr. MORGAN. If the Senator will allow me, I understand that this paper contains not only propositions of the attorneys, possibly some arguments of the attorneys, but it contains rulings of the committee.

Mr. McCOMAS. No: it does not. I will not interrupt the junior Senator from Alabama on this subject.

Mr. PETTUS. Mr. President, this is the official record of what the committee did on that day, and contains every word, so far as I remember, that was said by anybody on that occasion.

Mr. McCOMAS. That is exactly true. I quite concur. It contains the arguments of counsel and interruptions by members of the committee.

Mr. PETTUS. It especially contains this matter of the offer to prove certain things. It was demanded by the committee, as it will be seen in other parts of it, that they should state what they wanted to prove, and they did state what they wanted to prove; and the chairman of the committee in winding up did not speak of anything but the depositions, or the affidavits, he calls them.

You want to prove what is in these affidavits. We shall consider everything that is here as bearing upon the question.

And then the committee went into secret session.

Mr. MORGAN. Now, if my colleague will indulge me a second, I wish to say, if that committee did consider those affidavits, as they said they would, then those affidavits are a part of the record and ought to be before the Senate; and the paper that is here now ought to be printed for the use of the Senate as a part of this official proceeding. Whenever that is done I shall insist that those affidavits which were considered by the committee and passed upon by the committee are a part of what was done by that committee, and that the Senate has a right to resort to them for argument or whatever information they contain.

Mr. PETTUS. In one respect the Senator from Alabama is mistaken, because, although the chairman assured counsel, as I have read, at the conclusion of the day's proceedings that these depositions would be considered, the committee excluded them and decided that they would not consider them.

Mr. MORGAN. I just want to know what they are.

Mr. PETTUS. They are here as a part of the proceedings before the committee, in the memorial, as it is called, to the Senate by 49 members of the legislature, one of them a Republican.

Mr. TURNER. I should like to ask the Senator a question.

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Washington?

Mr. PETTUS. Certainly.

Mr. TURNER. Did the committee, after having assured the counsel that the affidavits would be considered and afterwards declined to consider them, then give counsel any opportunity to supply the proof in any other way?

Mr. PETTUS. They did not.

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 2355) in relation to the suppression of insurrection in, and to the government of, the Philippine Islands, ceded by Spain to the United States by the treaty concluded in Paris on the 10th day of December, 1898.

Mr. SPOONER. I ask——

Mr. McCOMAS. I ask that the unfinished business be temporarily laid aside without prejudice.

Mr. SPOONER. I was about to make that request, Mr. President.

The PRESIDING OFFICER. The Senator from Maryland asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection? The Chair hears none, and it is so ordered. The Senator from Alabama will proceed.

Mr. PETTUS. Mr. President, I never asserted that the committee decided in the presence of counsel or otherwise that these depositions should be read. My assertion was, and it is here on the record, that the chairman of the committee made the assurance in the presence of the committee and at the time of the adjournment. The committee for itself (the chairman, you know, sometimes says things that he is not authorized to say; it very often happens) finally decided that they would not examine these papers. I suppose—in fact, I know—that the whole idea was that there was nothing in them worthy of consideration. That is the amount of it.

But, Mr. President, in the record here was a piece of testimony I did not allude to yesterday. I intend to call it to your attention this morning. I will say that it was officially stated by the attorney-general—no, I had better read it exactly out of the proof itself. I am merely stating now what the chairman read out of one of these affidavits:

The attorney-general's argument consisted of such ill-tempered declarations as that he charged that the committee had already agreed to decide against Via in favor of Logan, and if they were to carry out this prearranged plan, the committee need not be surprised "to see blood flow in the capitol" on the next day—

Why?

because plans had been formulated looking to the preventing of the seating of Logan, even at the cost of shedding of blood.

Well, it does look to me like that was one circumstance that ought to have been looked at, at all events. And further—

Instead of attempting to remove this supposed prejudice by reason, he attempted to coerce the committee by threats of what would happen in case they acted in accordance with the dictates of judgment and conscience and contrary to his demands. He said, in effect, that they need not be surprised if upon the following morning blood ran in the capitol, and asserted that the plans were completed, in case the committee acted according to the evidence and not according to the intention, to organize the house of delegates that would be subservient to his will, no matter what the consequences might be.

There are two distinct threats, proved by two distinct witnesses, made by the attorney-general of the State of West Virginia to a committee of that house sitting on the trial as you are sitting, in the trial of a contested-election case. Now, that would be a very pretty sentence for some Senator to get up here and repeat in reference to this case. But there it is.

But now, Mr. President, there is another matter that I omitted yesterday that I desire to read, and I will read it from this same book, as I have it here:

There is in the record itself a letter from one of the delegates—

A Republican—

to his wife showing that that was the intention—

That is, to break up the legislature—

unless by some means they could obtain a majority sufficient to elect NATHAN B. SCOTT. They already had a majority sufficient to elect a Republican Senator if he could get the entire votes of his party; but unless they could get a majority sufficient to elect NATHAN B. SCOTT they would organize a rump house. They would first turn out our hold-over senators and then organize a rump legislature and throw the State into anarchy and confusion; and they claimed that they would be backed in that by the State militia and by the organized government of the State.

That letter came into the possession of the Democrats, and they used it in this matter. There is no dispute about the writing at all. The member himself who wrote the letter got up and claimed as a breach of privilege that some man had taken his letter and carried it off. There is no dispute about the letter at all.

Well, that is one of the things this gentleman proposes to prove, and yet Senators tell us that they considered all these propositions and there was no offer of any evidence.

Now, Mr. President, I will make a few more remarks in reference to the other parts of this evidence, simply by way of recapitulation.

Mr. TURNER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Alabama yield to the Senator from Washington?

Mr. PETTUS. Certainly.

Mr. TURNER. There is one phase of this case I should like to have some information on, if it will not interrupt the Senator. I know nothing about the case except from the memorial which was presented to the Senate at the beginning of the present session by a majority of the members of the legislature of West Virginia. I remember it was alleged in that memorial, as to the agreement made between the two parties setting aside two members of the legislature and disallowing their votes in the joint convention, that those two members were present in the joint convention and that their names were not called under this agreement, and that if they had been counted as members of the joint convention, Mr. SCOTT would not have received a majority of the joint convention. I should like to ask whether the record discloses what the facts are in that respect; and if so, what the facts are?

Mr. PETTUS. Mr. President, the record does show exactly what the Senator from Washington has stated, and it proves it, I might say, mathematically. That was all gone over yesterday. This Via and Logan contest was decided in the house. There was another proceeding in the house in the case of Brohard and Dent. By this agreement Brohard and Dent were both suspended. They were not expelled. They did not decide who was entitled to a seat, but they were both suspended. In the senate there were three or four resolutions, three that I remember distinctly, to unseat certain senators whose seats were contested on that day; that is, about the 20th day of January. The election was to come on in the separate houses on the 24th and in the joint convention on the 25th. These resolutions were offered. They were offered really on the 23d, but they have got a mark on them of the clerk filed on the 20th. The proposition in these resolutions was not to suspend these two men, but just merely to give the other man the seat.

One of these resolutions included a man named Kidd, a senator, who had been duly elected, had his regular credentials, had been put on the rolls by the secretary of state, who himself was chairman of the Republican executive committee of the State of West Virginia, and had been regularly sworn in. The resolution as originally offered was that Kidd was not elected, but Morris was, and must take the seat and be sworn in. That resolution was never in that form acted on. But when it came up on the 24th day of January Mr. Smith offered a substitute, which was read in full here yesterday. The effect of that resolution was to suspend Kidd and Morris both, Morris having no vote and Brohard having no vote. Both were suspended—well, they did not say until after the Senatorial election, but they were suspended until the 7th day of February, on which day it was resolved that that resolution should be acted upon. So one Democrat in the house and one Democrat in the senate were suspended from the exercise of their function as members of that legislature.

Mr. TURNER. That was done not by resolution but by agreement, was it not?

Mr. PETTUS. It was done by resolution first.

Mr. MORGAN. By agreement first?

Mr. PETTUS. No, sir; it was done by resolution first, as to Kidd. But the resolution I speak of was that Kidd should be suspended and that Morris should take his seat and vote; and he did take his seat and voted on the 24th, when the separate houses voted. It was in that state of affairs as to Kidd when this agreement between 5 Democrats and 5 Republicans was made.

Mr. MORGAN. Now, if I understand my colleague, Morris had been sworn in and had been seated as senator.

Mr. PETTUS. Pro hac vice.

Mr. MORGAN. Well, he had been sworn in.

Mr. PETTUS. Yes, sir; and had his seat.

Mr. MORGAN. And had his seat.

Mr. PETTUS. And voted on the 24th.

Mr. MORGAN. And thereupon Kidd was sworn in?

Mr. PETTUS. Oh, no; Kidd had been sworn in when the legislature met.

Mr. MORGAN. Very good. Then I have got them reversed. Kidd had been sworn in and had taken his seat, and thereupon Morris was sworn in and Kidd was suspended.

Mr. PETTUS. No, sir; Morris was sworn in to occupy Kidd's seat.

Mr. MORGAN. And they were both suspended.

Mr. PETTUS. That was by the agreement afterwards. You confound the agreement that was made on the night of the 24th with the action of the senate on the morning of the 24th.

Mr. TURNER. Will the Senator from Alabama permit me to ask him a question?

Mr. PETTUS. Certainly.

Mr. TURNER. After Morris was sworn in, then, was not this agreement made between the committee of five of each party, that both Morris and Dent should not be permitted to vote in joint convention?

Mr. PETTUS. That is correct.

Mr. TURNER. But they were there in the joint convention; and if they had been counted as members of the joint convention, there would not have been a majority for Mr. SCOTT?

Mr. PETTUS. That is true.

Mr. TURNER. There was an agreement, to which these members were not parties, whereby they were denied their right to vote. So, although they were present in the convention, their names were not called and they did not vote, but counting them there would not have been a majority cast for Mr. SCOTT.

Mr. PETTUS. But for that agreement or the simple suspension of Kidd. If neither of those things had taken place, SCOTT could not have been elected. If only one of them had taken place, then it would have been a tie. SCOTT was declared elected by one vote and one vote only, and the votes are given and the names of the parties are given.

Now, the Senator asked me if Kidd and Dent were present at the joint meeting of the two houses. If you will allow me to speak from the sworn statements of Kidd and Dent themselves and others in the shape of affidavits that the committee would not receive, they were both present and both wanted to vote against SCOTT. The original depositions are in the committee room, and here are copies of them.

Mr. TURNER. That is shown by the affidavits which the chairman said would be considered.

Mr. PETTUS. Yes, sir. That was shown by the affidavits that the chairman informed Mr. Welles would be considered. Those facts are shown there. In other words, but for the fraudulent conduct of the senate of the State of West Virginia Mr. SCOTT could not have been elected at all. They had a majority of 1, counting all the Republicans, but Mr. Haptonstal, of the house, a Republican, would not vote for Mr. SCOTT, did not vote for Mr. SCOTT, and joined in this protest to the effect that that election was a fraud on the people. Suppose Dent and Kidd had not been suspended by this agreement. They were there in the joint convention ready to vote, but by the resolution in each of the houses they were suspended.

Senators may think there is no fraud in that, but how a man who is reared in a Christian country, even without education, could think it was not fraudulent seems to me a miracle. Mr. SCOTT got his seat by the fraudulent performance of the senate of West Virginia, backed up by the governor and the attorney-general with this threat of violence to the house of representatives, with a threat of bloodshed, with a threat that the militia would be called out and that the house of representatives would be broken up and a new house ordered or formed. The attorney-general made all these threats and said he was backed up by the authority of the government and the militia would be called out to enforce it.

Well, the Democrats yielded to the pressure and made this agreement, which has been read, and the agreement, if it had been really interpreted as the witnesses all swore that it was known to all men at the time the agreement was signed, would amount to this: "*Resolved*, That we let Mr. SCOTT be elected, but you must put our honest members back here in their seats after it is over." And they were put back.

There was a contest pending, which was inaugurated on the 23d, the day before the voting was commenced, against Mr. Kidd. That is, I say it was inaugurated so far as it was called to the senate's attention, but it had on it a mark of the clerk, "filed on the 20th." That man was suspended by the action of the senate before this agreement was ever heard of. But it had been talked about. The threats were made—made by officials, not by just one man. The history of the whole transaction is given in this letter of which I have been speaking, of the man to his wife. They wanted to examine him. He could give a history of the whole transaction, and he was distressed to death that they had got into that fix, but he said that they had resolved to elect Mr. SCOTT anyhow, and that they would turn out all the newly elected senators, and they would have a rump house, and how they would get the rump house, how they would govern, with the militia to enforce the law. He was quite sorry that they were getting into that dreadful condition. That is what they determined upon. Senators, if that is no fraud, if a man who was born within a thousand miles of a Christian country can say that that is no fraud, we are in a dreadfully bad fix. That is all I have to say.

There is one remark I wish to make on the law of the case before I sit down. Senators do not seem to comprehend, and if they do comprehend they do not seem to be willing to acknowledge that they comprehended, a distinction between a judgment of either house as to whether a certain man was elected or not elected, and a mere suspension of a regular member to answer a particular purpose. Of course the senate of West Virginia is the judge of the election and qualifications of its own members. That is the law all over the United States, so far as I know. That is the law here, if we would exercise it. But judge, mind you, of what? Of the election and qualifications of its own members. That is what it is the judge of. They are expressly prohibited from expelling a member, except for misconduct and on a two-thirds vote.

Of course we all know that in such cases, where the house in the legislature acts upon a contest, hears the evidence, and decides in favor of one or the other, that as a general rule is conclusive afterwards, provided always that fraud does not intervene to destroy the vitality of the proceedings. That has been the exception. It has been the exception that was founded away back when our ancestors were first framing their laws in England. It never was decided, and it never can be decided by a reasonable court or by a reasonable legislative body that fraud can not vitiate a proceeding in a State legislature. There never was such a decision. On the contrary, it is decided the other way. I would just appeal to these gentlemen to discuss that case to-morrow.

Mr. President, here was no judgment rendered by the senate of West Virginia on the qualifications of Kidd, on the election of Kidd; on the qualifications of Morris, on the election of Morris. No such proceeding was ever had. This proceeding on the 24th of the month, in the morning before the legislature voted on the Senatorship, was that Kidd should be suspended and that Morris should take his seat pending the contest, and that the contest was postponed indefinitely. There was no time whatever fixed for it to be considered.

Now, do Senators tell me that that is a judgment of the senate as to either the election or the qualifications of either of those men? It was not so. No lawyer can ever torture his mind into the belief that that was a judgment on either the election or the qualifications of either of those men. One is suspended and the other is to take his seat until after Mr. SCOTT is elected United States Senator. That very proceeding of the senate, as is proved in these depositions beyond all controversy, produced that agreement, together with the threats that had been made by officials and which had been communicated to everybody, and proved to have been made by officials themselves.

The attorney-general ought to be able to speak for the governor, especially after the governor had started this fraud himself, and he asserted that he would do all these things: that blood would flow; that they had made their plans to prevent the seating of Logan at the cost of shedding blood, and that the government—he did not say the governor, according to the testimony—would sustain what they were doing and he would sustain it by calling out the militia to enforce their orders, and they would break up the house and make a rump house for the purpose of electing Mr. SCOTT. That is the amount of it.

Senators say, Oh, well, that is mere rumor. Rumor! It is a rumor which is declared by the attorney-general of the State in the presence of a sworn committee of the house of representatives and proved mathematically by two of its members.

Mr. President, the distinction, in a lawyer's mind, is just as clear as noonday that while the senate of West Virginia could determine on the election and qualifications of its members, it had no

earthly power, to say nothing about right, to suspend a man temporarily for such a fraudulent purpose. It was just brute force of numbers, backed up by the governor and his militia, and his blood-thirsty attorney-general.

Mr. President, I have said all that I ought to say on this subject. If Senators want the law and want the authorities on this subject, they can find them all collected in the argument of the Senator from Connecticut [Mr. PLATT] in the Du Pont case.

Mr. TURNER. Mr. President, if the facts are as stated by the junior Senator from Alabama concerning the agreement to deny to two recognized members of the legislature the right to vote in joint convention, I am surprised at the report of the committee in favor of Mr. SCOTT. It seems to me it presents a question here which does not go back of the reorganization of the legislature, but one which raises the question whether Mr. SCOTT actually received votes enough in the joint convention to elect him a member of this body.

If it be true that the balance of the members of the legislature agreed that two of the legally admitted members should not vote in the joint convention; if it be true that they were present in the joint convention; that their names were not called by virtue of this agreement, and that if their names had been called and they had voted against Mr. SCOTT he would not have had a majority of the joint convention, then, in my view, under the Constitution and laws of the United States, he was never elected a member of this body.

Mr. McCOMAS. Will the Senator from Washington allow me just there to shorten his discussion on that point?

Mr. TURNER. Certainly.

Mr. McCOMAS. The sitting member in the senate was Morris, a Republican, who had been given the seat formerly held by Kidd, a Democrat; and the sitting member in the house was Brohard, a Republican. His seat was contested by Dent, a Democrat. Had there been no agreement and had Brohard and Morris voted it would have added two Republican votes. Had Kidd been allowed to be reinstated in the senate and Brohard to remain where he was, it would have been one Republican against one Democratic vote; so none of the things the Senator from Washington has stated could possibly have happened.

Mr. TURNER. How does the Senator know that they would have voted for SCOTT?

Mr. McCOMAS. Because Mr. Brohard said he would vote for SCOTT and because Morris did vote for SCOTT the day before.

Mr. TURNER. The day before.

Mr. McCOMAS. And intended to vote again until stopped by this agreement. The agreement did not stop anybody, in fact, but the formal and solemn resolution of a majority of the senate and a majority of the house—not only a majority, but the unanimous vote of the senate and house—acted upon the right of these two parties to vote in the joint convention or in the proceedings of the house to which either of them belonged.

Mr. TURNER. Will the Senator state how and where Brohard stated he would vote for SCOTT?

Mr. McCOMAS. Brohard?

Mr. TURNER. Where did he state that he would vote for SCOTT? How and when did he so state?

Mr. McCOMAS. He stated it frequently and to many persons.

Mr. TURNER. That is hearsay, is it?

Mr. McCOMAS. That is the statement, which was made to many people.

Mr. TURNER. Is there anything in the record here to show how Morris and Brohard would have voted?

Mr. McCOMAS. The journal shows not only how Morris would vote, but how he did vote.

Mr. TURNER. Oh!

Mr. McCOMAS. He cast his vote for SCOTT the day before.

Mr. TURNER. Do you not think he might have changed his mind between the day before and the day he was denied the right to vote?

Mr. McCOMAS. He might have changed his mind, and so might everyone who voted for McGraw. You understand that Mr. McGraw was the Democrat caucus nominee and Mr. SCOTT was the Republican caucus nominee. Mr. Morris had voted for Mr. SCOTT. Mr. Brohard would have voted for him. Mr. Dent, if he had been seated (he was simply a contestant, claiming the seat of Mr. Brohard, who was a Republican, elected by 81 majority) in the place to which apparently Brohard was elected, he would probably have voted for the caucus nominee. I do not doubt it. But at the time of the election the result would have been two votes for SCOTT; in any attitude, one for SCOTT and one for McGraw, and the result would not have been changed. It would have been inconsequent in respect of the final vote.

Mr. PETTUS. Will the Senator from Washington allow me? The Senator from Maryland ought not to have stated the facts that way. The truth is on the record, and I speak now by the record of the legislature itself, what are called the "journals." The Senator from Maryland says Morris had a seat already before the agreement was made. To be sure he had, but how did he get it? He got it on the morning of the 24th, by a resolution suspending Kidd and putting Morris in his place on the day after the contest was presented to the senate, though it was marked "Filed on the 20th." That is the way Morris got his seat. The Senator from Maryland ought not to have said Morris was already seated. He was seated, but he was seated by this damnable resolution that I have been talking about.

There is one thing about which I did not inform the Senator from Washington while I was up. The senate, two-thirds Republican, on the seventh day, the day appointed for the trial of this case, and after Mr. SCOTT was elected and after the fraud and they had got all the benefits of the fraud, acted upon the case of Morris and Kidd. They had not taken one particle of testimony from the time this agreement was made, except that they had counted some votes that the committee already had in their possession, and the senate of the State of West Virginia unanimously resolved that Kidd was entitled to his seat. They did not even go through the form of swearing him over again; he was merely suspended anyway.

Now, as to the proceeding in the house. The committee had investigated that case thoroughly. Neither of those men had their seats. One of them had a false certificate; I mean by that that he was fraudulently put upon the roll of members. Neither of them had a certificate, except from one of the returning board. Each one had a certificate from one member of the board. It had to be made by two, there being three members of the board. The house has gone into that case.

At first they had refused to seat either one of those men on the ground that they had no certificate; but they had gone into the transaction, had thoroughly investigated it, and the committee had reported to the house that Mr. Dent was elected and that Mr. Brohard was not elected; and it was ready to be voted on. All the forms had been gone through, all of the evidence that had been offered was taken, and the house would have voted on that resolution on the 24th day of January. That is another point, I would say to the Senator. So the Senator from Maryland ought never to have said that Mr. SCOTT would get the vote of Morris anyhow. He got the vote of Morris on the 24th, and both of these Democrats were suspended by the agreement on the night of the 24th.

Mr. TURNER. Mr. President, I do not think the Senate can act upon such evidence as the Senator from Maryland offers us here as to the way in which these members who were excluded would have voted. I do not think the fact that Morris voted for SCOTT on the 24th is evidence to the Senate that he would have voted for him on the 25th. It is no evidence of that fact at all. I do not think the fact that Brohard may have stated to individuals on the streets that he would have voted for SCOTT is any evidence of that fact here. Certainly both of the evidences on which the Senator from Maryland relies are very flimsy. If this case is to be made to depend upon a question as to how the excluded members would have voted, we ought to have better evidence than that which the Senator from Maryland presents. But I do not think we can have any evidence on that subject.

The facts appear to me to raise a plain legal proposition here which bars Mr. SCOTT; that is, that by private agreement between the other members of the legislature two members of the legislature, who were recognized as such by both houses, were excluded from their right to vote in joint convention. They were in joint convention, and their names were not called to vote for Senator on that day, and counting them as members of the joint convention, Mr. SCOTT did not have a majority of all the members of the joint convention.

Now, the act of 1866 requires that at this joint convention a majority of all the members then present shall vote for the successful candidate in order to insure his election. The matter is regulated by section 15 of the Revised Statutes of the United States. After providing for the balloting in the respective houses, it provides:

> At 12 o'clock meridian of the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of all the votes in each house, he shall be declared duly elected Senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for Senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected.

If the facts are as stated by the Senator from Alabama, in which the Senator from Maryland concurs apparently, then it is evident that there is a record here which shows that Mr. SCOTT did not on this day receive a majority of the votes of all the members of the legislature then in joint convention. It seems to me that we can not afford to adopt a resolution declaring that a man can be elected to this body under these circumstances.

A similar case would be if a close question were pending in this body on the passage of a bill, and the members of the Senate, for

some reason or other, should agree that I or some other member should not be permitted to vote on that question, and the yeas and nays were taken, and under that agreement the presiding officer declined to have my name called, and by reason of the failure to call my name a majority was apparently registered in favor of the proposed law. Would it be contended by anybody that a law could be passed in this body in that manner? And when it requires a majority of all the members of the legislature in joint convention to elect a Senator, can it be said that all of the members of the legislature except two shall rule out those two in order to accomplish an election?

That is the square legal proposition presented here. I have not heard it discussed by anybody in this debate. The members appear to have gone off on the proposition that this was an attempt to overturn the organization of the legislature and to overrule the decision in the Turpie case. Certain features may present that question, but this case is not at all analogous to the Turpie case. I do not understand that it has ever been decided in this body. I do not understand that such an extraordinary condition of affairs has ever been presented to this body in the election of a Senator.

Instead of overturning the organization of the legislature, this proposition recognizes the organization of the legislature, recognizes all of the members who were declared elected by the two houses of the legislature, and makes the test of Mr. SCOTT'S right to a seat in this body to depend upon an examination of the question whether he did in fact receive a majority of all the votes of the legally recognized members of the legislature then sitting in joint convention. It appears to be granted on both sides that he did not so receive those votes, because a majority of the legislature had determined that certain members should not have the right to vote in this joint convention.

I say that this proposition can not be wiped away by the Senator from Maryland getting up and saying that Morris would have voted for SCOTT if he had been permitted to vote, because there is only one way of determining how Morris would have voted, and that would have been by calling his name and permitting him to vote in the joint convention; and the same thing may be said with reference to Brohard.

I do not think this is a technical question. I think it is one which ought to appeal to every Senator, especially in view of the other facts in this case, which show a condition of duplicity and double dealing and fraud in connection with the organization of the legislature which would justify the Senate in seizing hold of any legal ground to say that there had been no election and to send the matter back in order to enable the legislature of West Virginia to elect a member to the Senate in a proper, legal, and constitutional manner.

Mr. CHANDLER. Mr. President, I am led to say something more in this case by the remarks of the senior Senator from Alabama [Mr. MORGAN], made yesterday. I asked him whether he thought the decision in the case of Mr. Turpie was sound or unsound, right or wrong. I understood the Senator—I am sorry he is not now in his seat—to say impliedly, if not directly, that he thought the decision was wrong. If that is correct, there is an important question now before the Senate. Ever since that decision was rendered it has been understood that it governed the Senate. It has governed the Senate. It has influenced the decisions of the Committee on Privileges and Elections upon cases before it.

In order not to do the senior Senator from Alabama any injustice I will read what he said. I asked him:

I should like him to be specific as to whether he holds that the report and the decision in the Turpie case were erroneous or not, because there the attempt was to assail the decision of the Indiana legislature in two cases for fraud.

Mr. MORGAN. I have not looked at that case lately, but as the Senator puts his question to me, I feel an old impression creeping over me that I did not think it was right.

Mr. ELKINS. But you voted for it.

Mr. MORGAN. Nothing is right in the sight of the American people or the Senate of the United States which forms a technicality to hold the truth in chains. Nothing is right which foists a falsehood upon the Senate. Although it may be done under the strictest formalities of a record and under seal, it is not right. The Senate ought always to feel that it has the power to break away from the false device and fasten its judgment upon the solid foundation of truth. It ought always to feel that way.

That is about as direct an answer as the senior Senator from Alabama ever gives to any question, and I feel justified in interpreting it to mean that the decision in the Turpie case was erroneous.

Mr. President, you will remember that in May, 1888, I questioned the report in that case. The Senate was asked then to assent to a very positive proposition of law, which is to be found in the debate at that time. It is also to be found in the report of the Senator from Maryland in this case of Mr. SCOTT. It was read to counsel in the Scott case when they were arguing before the committee.

The CHAIRMAN. Let me read what they offered to prove in the Turpie case:

"That before said alleged election the senate wrongfully, and for the purpose of obtaining a majority for said Turpie in said joint convention, declared two members who had been duly and lawfully elected members thereof not entitled to their seats, and declared two other persons who had not been duly and lawfully elected to be entitled to such seats, and thereupon seated such persons, and that this was done without right, without evidence, and without hearing or debate, and that said persons so seated thereafter were present and voted for Mr. Turpie in said convention, and that without such votes said Turpie would not have received a majority."

I think that took place only a day or two before the Senatorial election.

Senator HOAR. Yes; I myself wrote the report.

Mr. ST. CLAIR—

Mr. St. Clair was the counsel arguing the case—

I will only say that I am a pretty good State rights man, but I would never vote for that proposition of law.

When there was before the Senate Mr. HOAR'S report, which was unanimously adopted by the Senate, declaring that Senator Turpie should not be disturbed in his seat, I thought that was a very doubtful legal proposition, and I raised the question whether, if the turning out of members of a legislature because of their politics, and the seating of other men because of their politics, were in such close proximity to the Senatorial election that the acts could be fairly treated as a part of that election, and if it appeared on the whole to the Senate that these acts were not a bona fide exercise of the right on the part of one of the branches of the State legislature to decide upon the elections, returns, and qualifications of its own members, the Senate was not bound to go beyond the decision of the legislature and to inquire into and judge concerning this unseating of members and seating of other members, as being a part, under the circumstances, of the Senatorial election; and my dissent there stands of record. But there was no one to sustain me. I entered only my personal dissent. The report was unanimously adopted by the Senate, and, as I have said, it has governed the action of the Senate and the action of the Committee on Privileges and Elections ever since that time.

Mr. President, if the senior Senator from Alabama represents the other side of the Chamber, and if he really means that in the interest of the assertion of Federal power against the State legislatures he is willing to cancel and wipe out the doctrine of the Turpie case, then I say I will join with him in his attempt. I am willing, in the interest of the national power, the power of the National Senate, in a case of this kind, to reopen this case. I think Senator SCOTT can stand upon the facts; and if the Senate of the United States, upon this report and upon the motion of the junior Senator from Alabama [Mr. PETTUS], wishes to assert the right of the Senate of the United States to reverse the deliberate judgment of the two houses of the West Virginia legislature as to the rights of Kidd and Brohard in the senatorial election, I personally am willing to join in the act if the facts warrant it. But before voting I wish to understand what are the views of the Senators upon the other side of this Chamber.

Mr. STEWART. The statement of the Senator from Washington has rather confused me. I want to know the facts. Is it a fact that two members of the legislature, who had been seated and recognized as such, were not allowed to vote, although present at the joint meeting; that their names were omitted and not called, although they had been recognized and seated as members? I understand that to be the substance of the statement of the Senator from Washington. I should like to know the exact facts in the matter.

Mr. CHANDLER. When I argue a question of law, some Senator wants to know something about the facts, and when I argue a question of fact some Senator interrupts and wants to know about a question of law. I will answer the Senator briefly before I get through, but my mind is now looking in a different direction.

Mr. STEWART. Very well.

Mr. CHANDLER. If this law of the Senate in the Turpie case, which is very strong law, which was a hard dose for me to take, which I, like the senior Senator from Alabama, have been groaning under ever since, is to be reversed in the Senate, I am ready for it.

Mr. President, there was a contest suggested here against the Senator from Idaho [Mr. HEITFELD] whom I now see in his seat, but the law in the Turpie case governed the committee, and no steps ever were taken to make an investigation of the Senator's case. There was a contest suggested in reference to the seat of the present Senator from Delaware [Mr. KENNEY], but the case was deemed by the committee to be within the decision of the Turpie case. Nothing was done about it.

Mr. PETTUS. Will the Senator allow me to ask him a question? Was there in any one of those cases a case where a member was suspended?

Mr. CHANDLER. I will answer the question of the Senator from Nevada and the question of the junior Senator from Alabama before I get through.

In 1896 there was an attempt made in this body—and the motion was not made by a Republican Senator—to investigate the right to a seat here of the senior Senator from Alabama [Mr.

MORGAN], not now present, the Senator who is in favor of tearing down this doctrine in the Turpie case. The resolution to make the investigation went to the Senate Committee on Privileges and Elections.

The committee reported that there ought to be an investigation; that we ought to inquire whether there was a legal legislature in the State of Alabama which had a right to elect the senior Senator from the State of Alabama. There was a long minority report made against right of inquiry, and it was signed by Senator Gray, of Delaware; Senator Pugh, of Alabama; Senator Turpie, of Indiana, and Senator Palmer, of Illinois; and they planted themselves upon the doctrine that it was not for the Senate of the United States to undertake to make an inquiry and reverse the decisions, the findings, and the conclusions of a State legislature. We did not succeed in even getting a vote of the Senate upon that resolution to make an investigation into the right of the senior Senator from Alabama to hold a seat in this body.

In the next Senate will be considered the credentials of ex-Senator Blackburn, who has been elected to the Senate by the legislature of Kentucky; and if the doctrine in the Turpie case is to be overruled, then it will be the duty of the Senate to inquire whether Kentucky had a legislature that was competent to elect Senator Blackburn. The Senate will be asked to go into the question whether it will reverse the decisions as to its membership of the legislature of Kentucky.

This whole field will be open. The whole question whether Federal power as exercised by the National Senate is competent to reverse the decision as to its membership of State legislatures will be reopened, and we shall not know until there has been discussion over and over again of this question what the rule of the American Senate is. I say very frankly that I for one am willing to reopen that question. I think the decision in the Turpie case went very far when it was held that we would not make inquiry if a legislature the day before a Senatorial election deliberately, as the decision said, without right, without proof, without debate, turned out two Republicans and seated two Democrats, and the next day Senator Turpie was elected by two majority.

That decision was a hard decision, an extreme decision in favor of the power of a State legislature, an extreme decision against the power of the Senate; and I shall be very willing myself, personally, if Senators upon the other side of the Chamber so demand, to reopen that question and make an investigation in the West Virginia case and see what the law is, and learn whether it is law which applies to all men alike who come here with credentials—to Democrats who come here elected by their legislatures, and to Republicans who come here elected by their legislatures.

That is all I have to say on the point. If Senators will frankly declare that they wish to reopen this case for the purpose of contesting the law in the Turpie case and having it reversed, and having a new rule established for the government of the Committee on Privileges and Elections, I shall be very glad to join them.

In this case, Mr. President, there is no doubt what the facts are. The two branches of the West Virginia legislature reached decisions. The senate decided that Mr. Kidd should not be treated as the sitting member and that Mr. Morris should be treated as the sitting member. I do not care whether you call it a suspension of Mr. Kidd or whether you call it an unseating. The next decision, that neither Mr. Kidd nor Mr. Morris should vote pending the contest, was a deliberate decision of the body of which each claimed to be a member. In the house of representatives Mr. Brohard was rightfully upon the rolls, but the house of representatives decided, in view of the crisis, the exigency that existed in the State of West Virginia, that he should not be treated as the sitting member and should not have the right to vote.

The agreement made between the two political parties cuts no figure. I do not claim it had any force. I do say this, however, that even if the two houses had not acted, and yet Messrs. Kidd and Brohard had refrained from attempting to vote in the joint convention, this would not have invalidated the election. One was a Democrat. The other was a Republican. If one had voted for Mr. McGraw the other would have voted for Mr. SCOTT. The Senator from Washington seems to think that he has a right to assume that Mr. Kidd would have voted for Mr. McGraw, but denies that there would be a similar assumption that Mr. Brohard would have voted for Mr. SCOTT. Those 2 votes were not necessary to make a lawful joint assembly. There were 97 members in the joint assembly. There need not have been but 50 in the joint assembly; and then 26 votes for Mr. SCOTT would have elected him; and if 2 men or 10 men or 20 men had sat silent and had not voted—unless there was a knife at their throats, unless there had been bribery or actual violence—this would not have made any difference in the result.

That is the whole of this case. It is whether you will undertake to reopen the decisions of the Senate that have been hitherto made and reject the report of the majority of the committee for the purpose of establishing, contrary to the decision in the Turpie case, a doctrine that there is substantially no limit to the right of the Senate in reversing a decision of a State legislature.

Mr. LINDSAY. I wish to ask the Senator whether either of these members offered to vote or demanded the right to vote?

Mr. MCCOMAS. They did not.

Mr. CHANDLER. I do not understand that either of them did. It is absolutely certain that if Mr. Kidd had risen and offered to vote for Mr. McGraw, Mr. Brohard would have risen and offered to vote for Mr. SCOTT. How can Senators pretend that what took place, the amicable and honorable agreement between the leaders on both sides in the West Virginia legislature, into which the best thought in the West Virginia legislature entered, can invalidate what was deliberately done in pursuance of that agreement, to wit, the postponement of the contests in those two cases, and the decision that in the meantime neither of the two men should vote? It was only a week before the election of the Senator was to take place.

Senators know very well that the two contests could not be fairly decided in so short a time. But the houses might have gone on, as in the Turpie case, and have unseated first one member and then another; first a Democrat in the senate and then a Republican in the house. They might have gone on for 10 days doing these things, and then they might have undertaken to cast their ballots for United States Senator. If they had undertaken that kind of a controversy the result would have been two legislatures, no election of United States Senator which we could have recognized, and chaos and perhaps civil war would have come in the State of West Virginia.

Under such circumstances the two political parties came to an agreement, just such an agreement as is made upon this floor every week in a session of Congress. The two houses, acting separately, ratified that agreement. It was an agreement which it was within their power to ratify. The decisions they made were decisions which it was clearly within the power of the legislature of West Virginia to make, and such decisions can not be reversed by this body without reopening the settled law of the Senate and making an assertion that the Federal power as against State rights in reference to State legislatures goes a great deal further than it has ever been contended in this body that it would go, until the junior Senator from Alabama and the senior Senator from Alabama demanded a reversal of the decision of the Committee on Privileges and Elections in this case.

Mr. BACON. Mr. President, I do not desire to enter into any discussion of this matter, but as I had a little to say about the subject yesterday I wish to make my position entirely clear.

I think, as a legal proposition, the report of the committee is correct. I think it is the only safe position to be occupied by those who do not desire to see the Senate of the United States enter into the details of the constitution of a State legislature by which a Senator is elected, and for that reason I shall vote against the amendment offered by the Senator from Alabama.

But, Mr. President, I think it due to myself to say that I am unwilling that that vote shall in any manner be construed into an approval of the things which are disclosed here as having occurred in the West Virginia legislature. On the contrary, I wish to assert most emphatically that I as emphatically disapprove of them and think they are not to be justified. I do not think, however, it is a matter that we can go into.

Mr. TELLER. Mr. President, I think this is rather an important question. I wish to call the attention of the Senate to some remarks made by the Senator from Massachusetts [Mr. HOAR] when he submitted this case to the Senate in reply to the Senator from New Hampshire [Mr. CHANDLER], who seemed to somewhat question the report, although he did not call for the yeas and nays, and the report was accepted nem con, I believe, everybody voting for it.

Mr. CHANDLER. The Senator means in the Turpie case.

Mr. TELLER. In the Turpie case. The Senator from Massachusetts, addressing the Senator from New Hampshire, called attention to the position that the Republican party had occupied in the Electoral Commission contest, that we had asserted with great earnestness that the decision of the State authorities as to who was elected was absolutely final, a doctrine that I think everybody is acquiescing in now. After that the Senator from Massachusetts says:

> Now, in the same way we have the right, undoubtedly, being the final judges of the election, qualification, and return of our members here, to see whether the elector in the legislature of the State of Indiana in casting his vote was corrupted, or was under duress, or whether his vote in any way was wrested so that it was not the true and lawful act of that elector; but in determining who has the right to cast the several votes we are bound by the conclusive judgment of the legislative body of the State of Indiana.

He makes there the distinction, and that is what I call the attention of the Senate to, to show that by this doctrine we are contending for we are not preventing ourselves from looking into the

honesty or character of an election. That is still left to us. Let me read it again. This is what he says we may do:

To see whether the elector in the legislature of the State of Indiana in casting his vote was corrupted, or was under duress, or whether his vote in any way was wrested so that it was not the true and lawful act of that elector; but in determining who has the right to cast the several votes we are bound by the conclusive judgment of the legislative body of the State of Indiana.

Now, Mr. President, it seems to me that is a well-stated proposition of law, and one upon which we can stand.

So we had only to inquire in determining whether the votes of these two men, Branahan and McDonald, were to be counted, which changed the result; whether the senate of the State of Indiana had pronounced them to be entitled to seats in that body; and we had no authority given us to say whether they did that against right, or against evidence, or for the purpose of changing the result of the election.

I will not read all the Senator from Massachusetts said, but I will ask leave to put it in my remarks.

A question came up of the lawful organization of that senate whether the lieutenant-governor or the person claiming to be president pro tempore of the senate was the lawful and rightful presiding officer. But there was a senate there, a senate of unquestioned authority. The governor of the State was recognizing it as a senate, receiving and approving the laws which it undertook to pass. The other house, the Republican house of the Indiana legislature, was communicating with it as a senate, among other things inviting it to enter into this very joint convention in pursuance of the act of Congress; and it took its constitutional share in legislation and in laws which it passed, so organized and so presided over, by the entire acquiescence of the whole people of the State of Indiana, and is the law of that Commonwealth to-day. And in addition to that, and a still more important recognition than that, every single member, Republican and Democrat alike, of that body in his individual official action recognized it as a lawful senate, acting for all lawful and constitutional purposes.

Mr. PETTUS. Mr. President——

The PRESIDING OFFICER (Mr. PERKINS in the chair). Does the Senator from Colorado yield to the Senator from Alabama?

Mr. TELLER. Certainly.

Mr. PETTUS. I should like to have the opinion of the great lawyer who occupies the floor, as to whether the determination of the election and qualification of a member is not one thing, and suspending a member temporarily for a purpose is not another and a different proceeding?

Mr. TELLER. Well, Mr. President, I am not going into any discussion of this question. I rose simply to present what was the declared law of the Turpie case. I am going to quit then. I do not propose to go into any extended discussion of this case. After the Senator from Massachusetts had shown that everybody had recognized the legislature of Indiana as the lawful legislature of that State; that the Republican house had recognized the Democratic senate as the true senate, and that it had agreed to legislation, he concluded as follows:

Therefore, it seems to me, however much I may dislike the result, and however much I may disapprove the action of that body, if it be such as is set forth in this remonstrance, I do not see how, under my oath of office as a Senator, I can help giving effect to the votes of the persons whom that constitutional court—the senate of Indiana—declared, one by one, were entitled to act as electors on that occasion.

Now, Mr. President, there is the whole case in a nut shell. It belongs to the State of West Virginia to determine those questions, and they have determined them; and it seems to me there is nothing for us to do.

Mr. BACON. Will the Senator allow me?

Mr. TELLER. I want to say that in so declaring we do reserve the right to determine whether the votes that were cast have been corruptly cast or not.

Mr. BACON. I just wanted to remind the Senator from Colorado of the fact that in the Du Pont case the Senate also determined that it was for the legislature of Delaware to determine whether a man who had left the senate and had gone and was then exercising the office of governor should be considered a member of that senate and whether his vote should be counted, and the question whether Mr. Du Pont was elected or not turned on the question whether or not that vote should be counted. If it was not counted, he was elected; if it was counted, it was a tie, and he was not elected. We put the decision squarely upon the ground that the legislature of Delaware should determine that question and that the Senate of the United States would not undertake to go behind that determination.

Mr. TELLER. That is a fact. As I understand, the Senator from New Hampshire called the attention of the Senate to several cases where we had adhered to the doctrine laid down in the Turpie case. I do not understand it was the sole time, by any means, that that declaration had been made by the Senate.

Mr. PLATT of Connecticut. Mr. President, I only desire to say that I have never been satisfied with the Turpie case, and I think I expressed my opinion pretty fully on it when the Du Pont case was under consideration. I do not think the Turpie case and this case are by any means similar—certainly not in all points. But this discussion having taken a broad range, I do not wish by my silence to have it considered that I agree to the decision in the Turpie case.

Mr. MCCOMAS obtained the floor.

Mr. RAWLINS. Mr. President——

Mr. MCCOMAS. I will yield to the Senator from Utah, if he desires.

Mr. RAWLINS. I desire to ask the Senator from Maryland, and I am glad he is upon his feet, one question, that we may understand the facts in this case. I will state it as I understand it, and then ask the Senator if I state it correctly. As I understand it, there were 93 members in the joint assembly voting.

Mr. MCCOMAS. Ninety-five.

Mr. RAWLINS. And Mr. SCOTT received 49.

Mr. MCCOMAS. Mr. SCOTT received 48; Mr. McGraw received 46, and Mr. Goff received 1.

Mr. RAWLINS. If the two members who were suspended on the day prior to this convention by the votes of the two houses had been counted, there would have been 97 votes.

Mr. MCCOMAS. Ninety-seven.

Mr. RAWLINS. A majority of that number would have been 49.

Mr. MCCOMAS. Forty-nine.

Mr. RAWLINS. So, if those two had been counted as present, whether voting or not, Mr. SCOTT would have received a majority.

Mr. MCCOMAS. If they had voted.

Mr. RAWLINS. If they had voted. If they had been counted, he would still have had a majority.

Mr. MCCOMAS. He had 48 of the 95 votes cast. There were two other men to make 97 in the apportionment of representation in both houses of the legislature of West Virginia, but the journal of the joint assembly does not disclose anything about the other two men. There were 95 who met in joint assembly.

Mr. RAWLINS. The only point as to which I wanted to ascertain the fact was this——

Mr. MCCOMAS. If Kidd, the Democratic contestant in the senate who had been unseated, had voted with his party, it would have made one more vote for McGraw, but if Morris, the Republican, who had been seated instead of Kidd, had voted, it would have made in the senate one more vote for SCOTT. If Brohard, the sitting member in the house, had voted, it would have made one more vote for SCOTT. It would have increased SCOTT'S majority, but would not have changed the result.

Mr. RAWLINS. I was somewhat confused by the statement of the Senator from Washington [Mr. TURNER] that if there were two members——

Mr. MCCOMAS. The Senator from Washington mistook the facts.

Mr. RAWLINS. Suspended, present in the joint assembly, who did not vote, and who did not, so far as the record shows, ask to vote; but I think we can not say from the record whether they would vote one way or another.

Mr. MCCOMAS. No.

Mr. RAWLINS. The only thing that we would be entitled to do would be to count them as present, and then determine whether Mr. SCOTT had received a majority of those present, whether voting or not, and if they had been counted as present, as I understand the fact to be, Mr. SCOTT would still have received a majority.

Mr. MCCOMAS. That is true.

Mr. TURNER. Mr. President——

Mr. STEWART. I wish to ask a question.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Nevada?

Mr. MCCOMAS. I yield first to the Senator from Washington.

Mr. STEWART. I have been asking questions for some time, but could not get anybody to answer them. I want to know if all the men voted according to the resolutions of the two houses? Did the two houses determine who should vote, and was anybody there denied the right to vote who under the action of the two houses would have been entitled to vote if his name had been called? I want to determine that question.

Mr. MCCOMAS. I rose to answer that question. What is the inquiry of the Senator from Washington?

Mr. TURNER. The Senator from Utah spoke of the two men who were not permitted to vote as having been suspended. I wish to ask the Senator from Maryland whether they were in fact suspended by any resolution of either of the houses?

Mr. MCCOMAS. They were; and I rose to answer that question.

Mr. TURNER. Was there any suspension other than this agreement?

Mr. MCCOMAS. If the Senator will give me his attention, the fact is stated in the report of the majority. Under the apportionment the senate of West Virginia contained 1 more member and the house 1 more member, making 97 with all seats filled. I have said that there were 95 present in the joint convention. Now, the journal of the joint assembly discloses nothing concerning the 2 who if present and entitled would make the full representation of 97 in the legislature. It does not appear from the journal of either house or from the journal of the joint assembly if they were present or not. It does not show that they were entitled to vote, or that they in any manner claimed a right to vote,

or that they waived any right to vote. It is simply silent in respect of two persons who might be one a member of the senate and the other a member of the house.

Of course, prima facie, from the journal of the joint assembly they were not present. It is said in fact that they were in the hall. I do not know. It is certain that if they claimed any representative right, they did not claim it then and there, when it was their duty to claim it. And now, Mr. President——

Mr. TURNER. Mr. President——

Mr. McCOMAS. I will state why they did not claim it.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Washington?

Mr. McCOMAS. Certainly.

Mr. TURNER. I wish the Senator, before he gets away from this point, to answer my question, whether or not these two members were suspended by either house?

Mr. McCOMAS. Just when the Senator rose I was proceeding to say why and how it was that these two persons did not claim any right, did not make a demand of any right, because they knew their cases had been separately adjudged by the two houses. Here is the first case. The journals of the house and senate explain this matter very fully.

On January 20, 1899, by the senate journal, page 66, it appears a resolution was introduced in the senate declaring that Kidd, the sitting member, was not elected and that Morris was duly elected, directing that Kidd vacate his seat and Morris be sworn in.

Mr. PETTUS. That was not adopted.

Mr. McCOMAS. I am proceeding to say so. That was January 20. In orderly fashion the senate proceeded. On January 23 this resolution was considered by the senate, and a substitute was adopted reciting the contest between Kidd and Morris, the reference to and pendency of the contest before the committee on privileges and elections, and the opinion of that senate that Morris was entitled to the seat pending the contest, wherefore the senate resolved that Kidd was not entitled and that Morris was entitled to his seat in the senate from the Fourth senatorial district pending the contest, and that Morris be sworn in. Morris appeared, took the oath, and was seated.

That is the record of the proceedings of the senate. On January 25 the senate adopted a resolution that the contested-election case of Morris and Kidd be the special order for consideration and determination on its merits on February 7, 1899, with leave to either party to take testimony, "and that pending the determination of such contest neither Morris nor Kidd shall be entitled to vote or sit as a member of this body." The first two resolutions in pursuance of reports from the committee on privileges and elections were passed by a vote of 17 to 8, I think, and the last resolution depriving Morris of his right to vote was passed by a unanimous vote of the senate.

In the house, where Brohard was the sitting Republican member, he had a certificate which the supreme court of West Virginia have, since the legislature sat, declared was a valid certificate, and was entitled to be seated on that certificate. He was seated on that certificate.

On January 12 the house referred to the committee on privileges and elections the question of the right of Brohard, the sitting member, to be sworn in, with instructions to report the person prima facie entitled to be sworn in as a member from Taylor County. On January 16 the house adopted a resolution reported from said committee that, pending the determination of the title to the seat, neither Brohard nor Dent (the contestee) should "be permitted to participate in the proceedings of this house."

On January 24 the majority of that committee reported a resolution in favor of Dent, and the minority reported in favor of Brohard, the sitting member, and no action was taken. But on the 25th the joint assembly met. At that time the senate had regularly suspended the right to vote as to Kidd and Morris and the house had suspended the right of Brohard.

Mr. President, I appear to be much more of a State rights man than the junior Senator or the senior Senator from Alabama, or than the distinguished Senator from New Hampshire. It does seem to me that when each of these houses has passed upon the election, returns, and qualifications of its members, and by orderly procedure has conducted the contest and has unseated a man, and has thereafter said that pending the contest two persons may not vote, neither one nor the other in this house or in that, they have performed their functions, and the Senate has said very broadly in the Turpie case just referred to, and it has said in the Du Pont case, that a legislature has the jurisdiction and the power to do this thing. It was done in these two cases, in these two houses, and is an original exclusive jurisdiction belonging to the senate and the house of the legislature of West Virginia.

I know no other view to take, and I feel bound, and the committee, except the junior Senator from Alabama, felt bound, by the orderly adjudication of the matter which was solely within the jurisdiction of the two houses of the West Virginia legislature. They had these two cases; they passed upon them; but if they had not passed upon them on the day prior to the meeting of the joint assembly, the effect would have been to increase the majority of Mr. SCOTT.

My first proposition is that what they did they had the power to do; that we can not here ratify or repeal it or inquire into it.

My second proposition is that if you did undo what they did by resolution within their power, you would simply increase the majority of SCOTT and not change the result in the legislature. In that assembly in joint convention there sat 49 of one party and 46 of the other, and if you would wipe out this proceeding, which you have no power to do under many Senate rulings which I could cite here to the Senate, you would simply increase the majority of SCOTT and you would not change the result.

Now, Mr. President, one thing more in respect of the procedure of this committee. It is stated, I think adequately, when the committee reported, that the matter was submitted to the committee upon the memorials, the journals of each house, and according to statements of facts and certain oral arguments and admissions of counsel. The oral arguments and admissions of counsel are that this agreement of the 10 members, which appears in the report, should be taken as a part of the case, and that the statement of Mr. Davis, the Democratic leader of the house, as to the object and purpose of this agreement in the case, was a fair statement, authentic, from a man of good authority.

Those are the two oral admissions. The agreed statement of facts simply made certain memoranda not here of consequence a part of the case, and did what was not necessary; it made the journals a part of the case. They were necessarily part of the case. We were bound to take judicial notice of the proceedings in the journals.

The committee determined that the procedure of the two houses settled the question in respect of the two soldier senators, and the committee determined, and by almost a unanimous vote, that the action of the two houses of the assembly settled for this body the situation of the two contested seats, the one of Brohard and Dent in the house, and the other of Kidd and Morris in the senate.

Now, Mr. President, what further was there of the case? There was the whole of it. That settled the result of the election. That settled the election in favor of SCOTT. Senators here have discussed the matter somewhat as if the political majority in the legislature was questioned. That was never questioned before the committee and never questioned in West Virginia. The party vote was, as I said, 49 to 46. It had been 51 to a lesser number at an earlier stage.

Then the remonstrants offered to prove certain declarations of several State officials, members of the general assembly, and of attorneys in arguments before legislative committees.

Now, the committees were of opinion, and this is the matter I ask the attention of Senators to, that there was no proffer of sufficient evidence of either fraud or intimidation affecting the legislature to warrant such investigation by the committee.

The learned and able Senator from Alabama, in his views and in his remarks here, has made much, and earnestly and seriously made much, of those matters. I submit to the Senate they are trivial. When a Republican member of the legislature writes a letter to his wife and somebody finds and reads it, he simply finds that that Republican member was scared, not by the apprehension of a Republican conspiracy, but he writes to his wife and says:

MY DEAREST: I can not tell you when I can get away from here—perhaps not for many days.

Well, that is an excuse of a member of the legislature for not going home.

We are just going into the election——

Mr. TURNER. Mr. President——

The PRESIDING OFFICER. Will the Senator from Maryland yield?

Mr. McCOMAS. In a moment.

We are just going into the election of a United States Senator, and no man can tell what a day may bring forth. We are apparently upon the eve of a political revolution. The Democrats in the house seem determined to throw out all the Republican members; and if one more is thrown out, we will secede and form a new house of delegates.

Now, at that time the record shows that Via, a Republican, returned elected, had been unseated and Logan had been seated in his place, and a hysterical attorney, who happened to be attorney-general of the State, in arguing before the committee in a corner of the capitol, had said, "If you do this thing, blood will flow," and they had proceeded to do this thing.

Mr. PETTUS. Mr. President——

Mr. McCOMAS. They had turned out Via, the Republican, and they had put in Logan, the Democrat, and the blood did not proceed to flow. Then they proceeded to turn out Brohard, who had 71 majority and whom the supreme court says here should have been seated on a certificate, and he had been seated; and when they were about to turn him out then no blood flowed, and still peace prevailed, and Brohard was deprived of his vote; and

this man writes to his family that he could not get home in a day or two because the Democrats had formed a conspiracy to overturn the majority of that legislature.

It did not seem to the committee that that kind of evidence tended to prove a Republican conspiracy, and therefore it was treated very lightly. Then, further, when the attorney-general made a heated expression in his speech before the committee on privileges and elections of the house, that did not seem to be a very material thing; and when somebody said on a corner, "If this thing goes on we will have two legislatures," that did not seem material; and when the chairman of the committee telegraphed the people to get up their contests on one side, as they had upon the other, and the contests had gone on and the Republicans had unseated one, and the Democrats had practically unseated two, it did not seem to the committee that these things were worthy to be investigated, or that they were of sufficient weight or importance, or that, if they tended to prove anything——

Mr. TURNER. Mr. President——

Mr. McCOMAS. In a moment I will yield to the Senator.

That if they tended to prove anything they were of such little weight and persuasive force that the investigation would be expensive and of no benefit to the Senate; that the record action of the legislature of West Virginia had determined all the material questions, and the committee, except my distinguished and honored friend from Alabama [Mr. PETTUS], were unanimously of that opinion.

I now yield to the Senator from Washington.

Mr. TURNER. I find that I did not understand the Senator as others around me understood him as to the record from which he read, that the senate had passed a resolution that both Morris and Kidd should be suspended until the termination of the contest. I did not understand the Senator to read any record from the house showing that Dent and Brohard had been suspended.

Mr. McCOMAS. I will read it again.

Mr. TURNER. I am asking for information. I did not understand that the Senator had read any record of that kind.

Mr. McCOMAS. I have read it, and I am sorry the Senator did not hear it. I shall be glad to read it again.

Mr. TURNER. I did not hear the Senator read it; and I wish he would read it again.

Mr. McCOMAS. I will state it very briefly. This election took place on the 25th of January. In the senate on the 20th a resolution was introduced. Does the Senator understand the case in the senate?

Mr. TURNER. I understand the case in the senate.

Mr. McCOMAS. In the house the journal of the house shows that Brohard, when the house assembled, was sworn in as a member upon his certificate. On January 12 the house referred the question of the right of Brohard to a seat to the committee on privileges and elections. On the 16th of January the house adopted a resolution determining that, pending the contest over the seat, neither Brohard nor Dent, the contestee, should be permitted to participate in the proceedings of the house. Then, on January 24, a majority of the committee on privileges and elections reported in favor of Dent, and a minority reported in favor of Brohard, who from the 16th did not participate in the proceedings of the house under that order and resolution of the house itself. The whole proceeding was regular; the result was decisive, and the adjudication was of a matter in which each house had jurisdiction, original and exclusive, and not reviewable here.

Now, if there is nothing else to be said by any Senator, Mr. President, I trust we may have a vote.

Mr. PETTUS. If the Senator will be so entirely courteous as to answer one question, I shall be obliged to him.

Mr. McCOMAS. With pleasure.

Mr. PETTUS. Would it not be best to read that entire letter, instead of only a part of it?

Mr. McCOMAS. Which letter?

Mr. PETTUS. The letter from which you read the extract.

Mr. McCOMAS. If I do not weary the Senate, I will state that the letter here is not signed; but on page 50 it appears that this was a letter written by Delegate Oldfield to his wife. I will read the last two sentences of it:

> The Democrats in the house seem determined to throw out all the Republican members; and if one more is thrown out, we will secede and form a new house of delegates.

I had read so far. I now read the rest at the request of my friend from Alabama:

> If everything passes off smoothly and we elect a Senator this week, I will try and be in Washington.

I before omitted to read that.

Mr. STEWART. I believe I now understand the matter, although I could not get a direct answer to the question I put.

Mr. McCOMAS. I shall be glad if the Senator will ask any question he desires.

Mr. STEWART. I believe I understand the fact to be that all of the persons present who had been determined, in the respective houses, to be entitled to vote did vote.

Mr. McCOMAS. Every one of those voted.

Mr. STEWART. And no one was excluded in the joint convention who had the right to vote under the action of the house to which he belonged? If that be the case, I am satisfied with the record.

Mr. McCOMAS. That is the case.

Mr. STEWART. No protest was made?

Mr. McCOMAS. None whatever. No claim of any right was made by anybody. Now I ask for a vote upon the resolution, unless there be further speeches to be made upon it.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Alabama [Mr. PETTUS] to recommit the resolution to the committee with instructions.

Mr. CHANDLER. I ask for the yeas and nays.

Mr. McCOMAS. I hope the Senator will withdraw that request.

Mr. CHANDLER. It is not material to me whether the yeas and nays are called on this vote or the other, but I am going to call for the yeas and nays on the final decision.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Alabama, to recommit the resolution with instructions.

The motion was rejected.

The PRESIDENT pro tempore. The question now is on the passage of the resolution reported by the Committee on Privileges and Elections.

Mr. CHANDLER. I ask for the yeas and nays on the passage of the resolution.

Mr. ELKINS. It was my intention to have made some remarks on this question before its final determination, but Senators seem to fear that if further speeches are made the matter will go over until to-morrow. I am so anxious that the decision in this case shall be no longer delayed that I will refrain from speaking.

The PRESIDENT pro tempore. The question is on the adoption of the resolution reported by the Committee on Privileges and Elections.

Mr. CHANDLER. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. SULLIVAN. Let the resolution be read.

The PRESIDENT pro tempore. The resolution will be read.

The Secretary read the resolution reported by Mr. McCOMAS from the Committee on Privileges and Elections March 12, 1900, as follows:

> *Resolved*, That NATHAN B. SCOTT has been duly elected a Senator from the State of West Virginia, for the term of six years, commencing on the 4th day of March, 1899, and that he is entitled to a seat in the Senate as such Senator.

The Secretary proceeded to call the roll.

Mr. HEITFELD (when his name was called). I have a general pair with the senior Senator from New York [Mr. PLATT]. In his absence, I withhold my vote.

Mr. PETTUS (when his name was called). I have a general pair with the senior Senator from Massachusetts [Mr. HOAR]. If he were present, I should vote "nay."

Mr. PROCTOR (when his name was called). I am paired with the senior Senator from Florida [Mr. MALLORY]. If he were present, I should vote "yea."

Mr. QUARLES (when his name was called). I have a general pair with the junior Senator from Texas [Mr. CULBERSON]. If he were present, I should vote "yea."

Mr. RAWLINS (when his name was called). I have a general pair with the Senator from Ohio [Mr. HANNA]. If he were present, I should vote "yea."

Mr. SULLIVAN (when his name was called). I have a general pair with the junior Senator from Illinois [Mr. MASON]; but as I understand, if present, he would vote as I vote on this question, I vote "yea."

The roll call was concluded.

Mr. PROCTOR. With the consent of the Senator from Alabama [Mr. PETTUS], I will transfer my pair with the Senator from Florida [Mr. MALLORY] to the Senator from Massachusetts [Mr. HOAR], so that both the Senator from Alabama and myself can vote. I vote "yea."

Mr. PETTUS. Under that arrangement I am at liberty to vote, and I vote "nay."

Mr. BURROWS. I am paired with the senior Senator from Louisiana [Mr. CAFFERY]; but as he was with the majority of the committee in making this report, he would vote with the majority; and so I feel at liberty to vote, and vote "yea."

Mr. BUTLER. I have a general pair with the Senator from Maryland [Mr. WELLINGTON]. I inquire if he has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. BUTLER. If any Senator on the other side of the Chamber

can tell me how the Senator from Maryland would vote, I shall be obliged to him.

Mr. BACON (after having voted in the affirmative). I inquire if the junior Senator from Rhode Island [Mr. WETMORE] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not.

Mr. BACON. Unless some Senator on the other side of the Chamber can state with certainty how the Senator from Rhode Island would vote, I shall be compelled to withdraw my vote.

Mr. ELKINS. The Senator from Rhode Island would vote "yea," if present.

Mr. BACON. If that assurance can be given, I shall allow my vote in the affirmative to remain.

Mr. BATE. I desire to state that my colleague [Mr. TURLEY] is not present. If he were here he would vote "yea."

Mr. MCCOMAS. I will state that my colleague [Mr. WELLINGTON] would vote "yea" on this question, if present.

Mr. BUTLER. As I have already announced, I have a general pair with the Senator from Maryland [Mr. WELLINGTON]; but I am now assured that if he were present he would vote "yea." I therefore feel at liberty to vote; and I vote "yea."

Mr. RAWLINS. I transfer my pair with the Senator from Ohio [Mr. HANNA] to the Senator from Mississippi [Mr. MONEY], who is absent, which will permit me to vote.

Mr. QUARLES. That transfer of pairs will also enable me to vote; and I vote "yea."

Mr. RAWLINS. I vote "yea."

The result was announced—yeas 52, nays 3; as follows:

YEAS—52.

| | | | |
|---|---|---|---|
| Allen, | Cullom, | Kean, | Proctor, |
| Allison, | Davis, | Lindsay, | Quarles, |
| Bacon, | Deboe, | Lodge, | Rawlins, |
| Baker, | Depew, | McComas, | Ross, |
| Bard, | Elkins, | McCumber, | Shoup, |
| Bate, | Foster, | McEnery, | Simon, |
| Berry, | Frye, | McLaurin, | Spooner, |
| Burrows, | Gear, | McMillan, | Stewart, |
| Butler, | Hansbrough, | Martin, | Sullivan, |
| Carter, | Harris, | Nelson, | Taliaferro, |
| Chandler, | Hawley, | Perkins, | Teller, |
| Clark, Wyo. | Jones, Ark. | Platt, Conn. | Vest, |
| Clay, | Jones, Nev. | Pritchard, | Warren. |

NAYS—3.

| | | |
|---|---|---|
| Morgan, | Pettus, | Turner. |

NOT VOTING—32.

| | | | |
|---|---|---|---|
| Aldrich, | Fairbanks, | Kyle, | Scott, |
| Beveridge, | Foraker, | McBride, | Sewell, |
| Caffery, | Gallinger, | Mallory, | Thurston, |
| Chilton, | Hale, | Mason, | Tillman, |
| Clark, Mont. | Hanna, | Money, | Turley, |
| Cockrell, | Heitfeld, | Penrose, | Wellington, |
| Culberson, | Hoar, | Pettigrew, | Wetmore, |
| Daniel, | Kenney, | Platt, N. Y. | Wolcott. |

So the resolution reported by the Committee on Privileges and Elections was agreed to.

SENATOR FROM MONTANA.

Mr. CHANDLER. I desire to give notice that on Wednesday next, after the conclusion of the routine morning business, I shall ask the Chair to lay before the Senate the resolution in the Montana Senatorial election case, and I shall request the continuous consideration of the resolution until it is disposed of. If no one shall then desire to speak against the passage of the resolution, I myself shall not say anything in its favor, but rest the case upon the written report of the committee.

Mr. ALLEN. I should like to ask the Senator from New Hampshire, the chairman of the Committee on Privileges and Elections, when the evidence in that case will be published.

Mr. CHANDLER. I am able to say—and I am glad the Senator has asked me the question, for I thought some Senator would ask it—that there are 100 copies of the evidence already in the committee room, and a full copy of everything can be furnished to every Senator who desires it.

Mr. ALLEN. I was not aware of that fact. I think we ought to have a longer time to enable us to read that evidence.

Mr. CHANDLER. I will say to the Senator that I will furnish any Senator with the three volumes—the whole thing.

Mr. ALLEN. I shall be very glad to get them.

Mr. CHANDLER. I shall send a bound copy to the Senator's room this evening.

Mr. ALLEN. I hope the Senator will not push the case until we have had an opportunity to read over the evidence and see what it contains, so as to be able to determine the proper course to be pursued.

Mr. CHANDLER. I shall call up the case on Wednesday next.

Mr. BACON. As the Senator from New Hampshire is quite familiar with this case, with these volumes of testimony, and the length of time it has taken the committee to receive it, I should like to inquire of him—he also having the familiarity he has with the ordinary duties of a Senator and the extraordinary duties also—how long, in his opinion, it would take a Senator to read over that testimony with the time that he could spare from other matters?

Mr. CHANDLER. These volumes have been in print for some time, and any Senator could have had one of them, as the testimony has been printed from day to day. There are 3,000 pages of testimony. It is summarized in the report, which has been unanimously agreed to by all the members of the committee, and there are also statements in reference to the testimony in the minority report. I hardly think——

Mr. BACON. I should prefer to read the testimony for myself, rather than to take the statement of others.

Mr. CHANDLER. I have not finished my sentence. I will send a copy of the testimony to Senators. I hardly think it would be reasonable to ask delay in the consideration of this case until every Senator can read 3,000 pages of testimony. If on next Wednesday any Senator has any request to make in reference to the manner of proceeding with the case, of course the Senate will then consider that request.

Mr. ALLEN. Does the Senator think the Senate would be doing itself justice by pushing this case to a conclusion before a reasonable time has elapsed within which the evidence can be read? I have respect myself for the opinion and the ability of the Committee on Privileges and Elections; and yet I think, after all, I would prefer reading the evidence and examining the questions of law involved for myself before I am required to vote.

Mr. CHANDLER. I shall be glad, in order to shorten the labors of any Senator, to wait upon him myself with the three volumes, and expound particular portions of them to him; and it will be very agreeable to me to do that so far as the Senator from Nebraska is concerned.

Mr. ALLEN. If the Senator from New Hampshire will curb his facetious spirit and withdraw his facetious language——

Mr. CHANDLER. I will take it all back.

Mr. ALLEN. And if he will realize that we are engaged in the transaction of business, and not engaged in sport, he will realize, as everyone should realize, that it is asking a good deal of any man who occupies a seat in this Chamber to take the mere conclusions of a committee without an opportunity to read the evidence upon which those conclusions are based.

Now, as I understand it—I have no interest in this case one way or another any more than any other Senator—the Senator proposes to push the Senate in two or three days into the consideration of this case, which it has taken the committee three months to consider and three months to determine what they ought to do, and that, too, without the slightest opportunity to read a syllable of the evidence submitted before that committee. That would be ridiculous in any court or in any other tribunal.

I should like to see this case taken up at an early day and determined, but I want to see it taken up and determined after Senators have had a reasonable opportunity to read the evidence and digest it for themselves, so as to be able to determine what they ought to do in regard to it.

Mr. CHANDLER. I agree to everything the Senator has stated. Senators should have all the opportunity they can reasonably ask for not only to read the report, but to consult the evidence.

The case will be brought up on next Wednesday; and either by arrangement or by vote there can, of course, be such postponement as may be reasonable. Perhaps there will be no difference of opinion as to the time.

Mr. ALLEN. And there may be.

Mr. CHANDLER. And perhaps there may be. If there shall be any, it can be settled by a vote of the Senate.

Mr. STEWART. I should like to inquire of the Senator if the testimony has been indexed, and if there is an index as to names?

Mr. CHANDLER. I will say to the Senator that there is a very carefully prepared and full index, not only an index showing the pages where the testimony of witnesses is to be found, but a subject index. I anticipated the Senator from Nevada. If there is any particular subject connected with the inquiry that he wishes to read about, he will not only find the names of the witnesses and the pages given, but he will find an index of the subject-matter. Everything will be ready, and any Senator can have a copy of the three volumes who wishes for it.

Mr. BATE. I do not understand that the Senator from New Hampshire asks for unanimous consent to take this case up on Wednesday morning and continue it to its conclusion.

Mr. CHANDLER. No, Mr. President; I withdraw my statement that I should ask for a continuous consideration.

Mr. BATE. That is what I desired to know.

Mr. CHANDLER. The subject can then be considered. Whatever may be fair and right in this case can be done, and whatever is important to the sitting Senator from Montana, of course, will be given fair consideration.

I now only give notice that I shall call up the resolution on Wednesday next after the routine morning business. I will furnish a copy of the three volumes to every Senator immediately;

and we shall determine on next Wednesday morning what will be fair and reasonable so far as action on the case is concerned.

Mr. BATE. The Senator withdraws his proposition for continuous consideration.

Mr. CHANDLER. I shall not then ask for continuous consideration.

ELIAS E. BARNES.

Mr. ALLEN. I ask unanimous consent for the consideration at this time of the bill (S. 33) for the relief of Elias E. Barnes.

The PRESIDENT pro tempore. The Senator from Nebraska asks unanimous consent for the present consideration of a bill which will be read in full for the information of the Senate.

The Secretary read the bill; and, by unanimous consent, the Senate, as in Committee of the Whole, proceeded to its consideration. It directs the Secretary of the Treasury to pay to Elias E. Barnes $14,548.25, the amount found due him by referees acting under appointment of the then Secretary of the Interior, that amount being the loss and damage sustained by said Barnes by reason of the failure on the part of the United States to keep a contract made and entered into with him by the United States April 21, 1888, for putting in a concrete foundation for the Library building in the city of Washington.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

SALVADOR COSTA.

Mr. TALIAFERRO. I ask unanimous consent for the consideration of the bill (S. 3080) for the relief of Salvador Costa.

The PRESIDENT pro tempore. The Senator from Florida asks unanimous consent for the present consideration of a bill which will be read in full for the information of the Senate.

The Secretary read the bill, as follows:

*Be it enacted, etc.*, That the claim of Salvador Costa be, and is hereby, referred to the Court of Claims, and jurisdiction is hereby vested in said court to hear and determine the same; and all the papers, proofs, evidence, and documents pertaining thereto on the files of the Senate shall be transmitted to the said court to be used at the trial of the cause, in conjunction with such other testimony and proof as may be produced at the hearing. And if the court shall find that the said Salvador Costa is justly entitled to recover anything for his said sloop *Mary Lawrence* or for the use thereof, then it shall render judgment in favor of the claimant for such amount as in the opinion of the court he is fully, fairly, and equitably entitled to, but without interest upon his said claim.

SEC. 2. That no statute of limitation shall apply to the right of recovery by said claimant, and each party shall have the right of appeal to the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

CIVIL GOVERNMENT FOR ALASKA.

Mr. CARTER. I now ask unanimous consent that the Senate proceed to the consideration of Senate bill 3419, known as the Alaskan bill.

The PRESIDENT pro tempore. The Senator from Montana asks unanimous consent that the unfinished business may be further laid aside, and that the Senate proceed to the consideration of the bill known as the Alaskan bill. Is there objection? The Chair hears none.

Mr. STEWART. I suggest to the Senator from Montana that if we take up the Alaska bill the hour is so late that we shall not have a quorum when the time comes to take a vote. We have not been to the Calendar for a long time, and I propose that we now go to the Calendar of unobjected cases.

Mr. CARTER. I understand the fact to be that the Senator from Utah [Mr. RAWLINS] desires to address the Senate upon the Alaska bill, and he may as well proceed now as in the morning.

Mr. STEWART. By the time he gets through it will be too late for any action in the way of a vote.

Mr. SULLIVAN. Pending that, I ask that the bill (S. 3918) providing for the erection of engine house and the purchase of a chemical engine at Congress Heights, D. C., may be taken up.

Mr. CARTER. I feel constrained to ask the Senator to withhold that request for the time being, in view of the fact that the Senator from Utah is ready to proceed with some remarks on the pending amendment to the Alaskan bill.

Mr. SULLIVAN. Very well.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 3419) making further provision for a civil government for Alaska, and for other purposes.

Mr. RAWLINS. Mr. President, I do not intend to detain the Senate more than a few minutes. I simply want to make a statement on the question of what I conceive to be the proper solution of this matter, which has involved considerable discussion.

The Committee on Territories in the Alaskan bill, by sections 72 and 73, have presented two propositions. By section 72 an unrestricted right is given to aliens to acquire, hold, and transfer mining property. By section 73 the validity of any location or the transfer of mining claims heretofore made is not to be open to question on account of the alienage of the locator or the grantor. The first proposition is a material departure from the settled policy of the United States as embodied in its mining law.

The second proposition is an attempt to give a retrospective operation to that policy, and to make valid void mining locations and transfers, and to make void valid mining locations and transfers. To attempt to do this latter is not legislation, in my judgment, but confiscation. Every location of a mining claim in the district of Alaska, whether originally made or by whomsoever made, ought to be determined with reference to the law in force at the time the transaction occurred.

Mr. STEWART. That is right.

Mr. RAWLINS. We ought not by legislation to seek to determine the rights in favor of one person or class of persons as against another person or class of persons. That is not the legitimate province of legislation.

For this reason these two sections, 72 and 73, ought, in my opinion, to be stricken from the bill. The amendment proposed by the Senator from Montana [Mr. CARTER] proposes to accomplish that result—to strike out these two sections—and I am in favor at least of that provision to that extent.

This amendment further provides that "nothing in this act contained shall be construed as changing the existing mining laws of the United States." I see no reason why those laws, which have operated so satisfactorily in all the years that they have been in force in this country in the settlement of these rights upon the public domain, should not be continued in respect to the district of Alaska.

It has been asserted here, I think, under a mistaken view of the law, that Great Britain or the Dominion of Canada and Russia allow aliens, citizens of the United States, an unrestricted right to locate and hold mining property within their respective dominion, and that the United States ought not to be less liberal than those foreign countries. There is no reciprocity of mining right or privilege accorded either by the Czar of Russia or by the Dominion of Canada to citizens of the United States. To show that that is true, I read from the latest report of the Commissioner of the Land Office:

UNITED STATES MINING LAWS AND REGULATIONS THEREUNDER.

Section 13, act of May 14, 1898, according to native-born citizens of Canada "the same mining rights and privileges" accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States made no provision for such leases.

Mr. President, under the laws of the Dominion of Canada a lease may be obtained for a limited area of mineral land, not to exceed 1,000 feet square, for a period of ten years, upon compliance with certain conditions and the expenditure of certain amounts of money and the payment of a certain annual rental, with the right of renewal of such lease for another ten years upon certain conditions, and a further license, which may be granted to miners upon a certain consideration, to mine upon a similar tract of less than a thousand feet square, to continue only for the period of one year. This is the extent of the mining right or privilege granted under the laws of the Dominion of Canada to persons who are not subjects of Great Britain.

Last year Congress passed this law referred to by the Commissioner of the Land Office giving to native-born citizens of the Dominion of Canada precisely the same right or privilege accorded to citizens of the United States by the laws of the Dominion of Canada. But according to this report that law has been inoperative, not on account of any fault of the United States or of its laws, but because no such privileges are accorded under the laws of the Dominion of Canada.

Mr. President, the only other aliens whose rights seem to be in anywise involved in this controversy are subjects of the Czar of Russia. Russia does not permit to American citizens or any alien under any condition any mining right or privilege. Upon the application of certain citizens of my State I had occasion to make an effort in their behalf to procure a privilege to mine in Siberia. It is scarcely necessary to say that I found that such a privilege was not procurable.

These two propositions, as proposed by the committee, if carried into effect would not only be a reversal of the policy settled by our laws in regard to the operation of mines, but let us see what the effect would be. An alien is not authorized under the mining laws to locate a mining claim. A citizen, or one who has declared his intention to become a citizen, is authorized to locate mining ground, and as many claims of the dimensions prescribed in the law as he may be able to locate, complying with the provisions of the law. It is not true that an alien may make a valid location under the law. It is true that an alien may locate a mining claim.

If the alien, before a citizen, or one authorized by the laws of the United States, has located the same ground in compliance with the provisions of and authority conferred by the laws of the Government, has declared his intention to become a citizen, and thus qualified himself to hold, the decisions of the Land Department and the courts go to the extent of holding that that may relate back so as to validate his claim from the beginning, with this qualification: That it can not so relate back so as to cut out or destroy the validity of any intervening adverse right. A, an alien, locates to-day. To-morrow, a citizen, B, locates the same ground. The day after to-morrow the alien declares his intention to become a citizen of the United States. This does not render his original location valid, but the location of B is, under all of the decisions, both of the State and Federal courts, as well as of the Land Office, valid as against the location made by the alien.

This section 73 in that case proposes to make valid the location made by the alien and to make void the valid location made by the citizen.

That is the object sought to be accomplished, as I understand it, by the proposition as made by the committee in this bill, and it is to be the result of the contention of Senators who contend that this amendment offered by the Senator from Montana should not be adopted. That is amendable and subject to the very criticism which the Senator from Wisconsin and other Senators made in regard to the amendment offered by the Senator from North Dakota. We have no right to legislate retrospectively, to make void a valid location or transfer or to make valid a void location.

Mr. President, the proposition as embodied in the proposed amendment of the Senator from Montana, it seems to me, is entirely free from objection down to the point which I have read. It leaves the mining rights in the district of Alaska to be determined precisely as similar rights are disposed of elsewhere in the United States. It proposes expressly to perpetuate the policy adopted in years gone by and which has met with the approval of the Congress and has been adopted in the practice of the miners with the most satisfactory results. But the Senator from Arkansas moves to strike out this part of the amendment offered by the Senator from Montana:

But in any suit, action, or proceeding hereafter commenced involving the validity of an unpatented mining location in Alaska, any party alleging an interest in the subject-matter may put the competency of the locator in issue, and the courts shall determine whether the locator was a citizen or had declared his intention to become a citizen of the United States at the time the location was made.

I have before me a digest of all the decisions of the State and Federal courts and the Land Office upon that subject. I have carefully gone over them. My view of it is that this last provision embodies nothing more than what is now in the law upon this subject. It may be claimed, therefore, that it is unnecessary, and I think that is true; because while a mere intruder or trespasser or person not connecting himself with the United States can not challenge the competency of a man in the peaceable possession of mining property, the decisions without conflict hold that if an alien locates mining ground before he has declared his intention to become a citizen or before he has transferred his possession to one competent to hold, and a citizen of the United States or one having declared his intention to become a citizen has located ground pursuant to the authority of the Congress of the United States, such qualified locator has a right, as representing the United States and the interest which he has thus acquired by the authority of the United States, to put in question the competency of the original locator, to say that he is an alien and under the law had no authority from the United States to make the location. In that way the second party, as to the ground located by the alien, stands in the shoes of the United States. That is what Lindley on Mines and other writers mean when they say that only the United States or a person connected with the United States in interest can raise the question as to the competency of the party who made the location of the mining ground.

Mr. President, the Senator from Nevada [Mr. STEWART] invited my attention to a recent decision rendered in my State on that subject. The Senator from Colorado [Mr. TELLER] invited my attention to a recent decision of the circuit court of appeals for the Eighth circuit. If the Senator will examine those cases, he will find that what I contend for is precisely what was held in those cases. I read from the opinion of the Supreme Court cited by the Senator from Nevada. I read from page 302, 56 Pacific Reporter:

From a review of all of them—

That is, of the authorities—

upon this question, we conclude that if Kappes, although not a citizen—

At the time he made the location of the claim—

From a review of all of them upon this question we conclude that if Kappes, although not a citizen, performed all the acts necessary to a valid location of the claims and claimed to be the owner thereof, as the proof tends to show, and if he or his administrator performed the work necessary to keep his claims good, had he been a citizen, until the administrator, by order of the court and by consent of the heirs, conveyed the claims to the defendant or its grantors, and if the defendant was a citizen of the United States when it received the conveyance, and after the conveyance to it took possession and control of the claims and kept up the monuments and performed the necessary conditions to keep the claims good, its grantor, being a citizen, carried a good and valid right to the claims as against the plaintiffs from the date of the conveyance to it and its grantors, provided no other right attached in plaintiff's favor prior to such conveyance and the subsequent performance of the required conditions by it and its grantors.

In other words, if no intervening right accrued by the location of the claim prior to the transfer of the possession to a citizen or one qualified to hold, such transferee would be entitled to hold. If there had been an intervening location accruing, then such declaration of the original locator to become a citizen of the United States would not relate back so as to cut out the intervening claimant.

The same principle is affirmed by the decision in the circuit court of appeals in the Eighth circuit. It draws precisely the same distinction; and I call attention to the same principle, as embodied in the decision of the Land Department, which is as follows:

A claim to public land illegally initiated by an alien may not be validated by a subsequent declaration of intention to become a citizen in the face of an intervening adverse right.

Now, the Wulf case, reported in 152 United States, in no manner conflicts with this doctrine. There the location was by a citizen of the United States, and of course valid. Subsequently it was transferred to an alien, and the court simply held that that did not operate as a forfeiture of the right which had been acquired by the citizen in the original location.

Mr. President, without referring to the numerous decisions upon this subject, I simply content myself by saying that I do not think there is any case where the question has been precisely raised in which it has been held that a party connecting himself with the United States by complying with the mining laws of the United States in the making of a mining location can not raise the question as to the competency of an adverse party, whether claiming by original location or otherwise. Such person indirectly represents the United States in raising the question.

It is true that the decisions go to this extent: That if an alien is in the possession of property, another alien can not raise the question as to his competency to retain possession of it. If an alien is in peaceable possession of property, his right to possession can not be questioned by a mere naked trespasser—a man who does not proceed under and by virtue of the authority conferred by Congress to take possession of and appropriate a part of the public domain for mining purposes.

But in every case in all the courts in California, Nevada, Montana, Utah, and Colorado the question has been permitted to be raised in every instance; and so it has been held in the Land Department where two parties were claiming the same ground, each claiming to have complied with the conditions of the mining laws to give him the right to it, where one of the questions involved was the competency of one or the other of the persons to make the location, it being contended that he was not a citizen or had not declared his intention to become a citizen. So if this be true, the latter part of the amendment offered by the Senator from Montana does not in any wise change the existing law. It is a reaffirmation of that which is found in every decision bearing upon this question.

To further illustrate this idea, in 83 California, the supreme court of California decided that where an alien located mining ground one day and it was relocated the next day by a citizen the citizen took as against the alien. It was held that he could raise the question, as he did raise it in the pleadings, and the decision was in his favor.

In a case, I think in 62 California, where precisely the same question was involved which was presented in the Wulf case in 152 United States, where a citizen located a mining claim and subsequently transferred or sold to an alien, it was held by the supreme court of California that in that case the sale to an alien did not operate to defeat the title so as to permit the relocation of the ground. It did not operate as a forfeiture. So a later decision made by the supreme court of California was regarded by that court as in strict harmony with its earlier decisions and in strict harmony with the decision rendered by the United States Supreme Court, and reported in 152 United States.

Mr. PETTIGREW. I should like to ask the Senator from Utah a question.

Mr. RAWLINS. Certainly.

Mr. PETTIGREW. Have the courts decided that where a citizen purchased a location made by an alien after the ground had been relocated by a citizen, the citizen purchasing from the alien can hold the claim?

Mr. RAWLINS. The courts, without exception, have held to the contrary.

Mr. PETTIGREW. I had been informed that they have so held.

Mr. RAWLINS. They have never so held. I am satisfied that no case can be found to that effect. I have requested the Senator from Colorado and the Senator from Nevada, both of whom have had great experience upon this question, to furnish me a case

holding any such doctrine; and I have been cited by the Senator from Colorado to the Utah case, from which I have just read and in which the court distinctly held that the ground located by an alien was subject to relocation by a citizen, and if so located before the alien declared his intention to become a citizen and thus qualified himself or transferred his possession to a citizen who was entitled to hold, the intervening locator's right would prevail.

Mr. PETTIGREW. That is the point.

Mr. TELLER. Will the Senator from Utah yield to me for a moment?

Mr. RAWLINS. I will.

Mr. TELLER. I wish to say to the Senator that I do not accept that as a correct statement of the law. I shall take occasion to say that he is not correct in that particular. I wish to call his attention, so that he may now make his reply, if he chooses, to this point:

If it is true that the courts have laid down the rule for more than two hundred and fifty years that nobody can take advantage of the alien ownership and holding except the sovereignty itself, which they have held very decidedly—that it is a question for the Government and the Government alone—is it not true that that rule is changed if he is correct when he says that the qualified locator of a claim has so connected himself with the Government that he stands in the place of the Government? If he makes that assertion, he must support it by some decisions, which I challenge him to do.

I can call attention to the case of Fairfax, lessee, *vs.* Hunter, which was settled in 1818, as I recollect, in which the question arose in this way: A grant had been made to Lord Fairfax while we were citizens or subjects of Great Britain. Fairfax adhered to the Crown. The colony of Virginia granted the same land to the Hunter heirs, and the controversy there was between them. That brings up squarely the case which the Senator cited.

Mr. RAWLINS. I understand——

Mr. TELLER. Wait a moment. The court there held that the State of Virginia could not in that method raise the question; that it must be by direct office-found. I shall present that case and have it considered, I hope, by the Senate, because it goes into the question very carefully and shows the reason why nobody but the sovereignty should be allowed to raise the question. I want to say to the Senator that he can not find a case where the courts have adjudicated property against an alien because he was an alien, where the Government itself was not concerned.

Mr. ALLEN. Will the Senator from Colorado permit me to ask him a question?

Mr. RAWLINS. Mr. President, I prefer to go on.

The PRESIDENT pro tempore. The Senator from Utah declines to yield.

Mr. TELLER. I will say that I have not been able to find any case which would cover the Senator's declaration in reply to the Senator from South Dakota.

Mr. RAWLINS. I do not intend to detain the Senate by referring to the numerous cases, a digest of which I have before me, that held precisely what I understood the Senator to dispute. For instance, the case in my own State——

Mr. TELLER. If the Senator will allow me, I do not mean to say that the States have not so held. It was so held in Nevada, so held in Colorado, so held in Utah, so held in Montana, but the Supreme Court, the court of final resort, has in every case set them aside every time they went up.

Mr. RAWLINS. I have here before me the case which the Senator cited, the very latest case, a rehearing of the case of Billings et al. *vs.* The Aspen Mining and Smelting Company. Their attention was called to a decision of the Supreme Court of the United States, and they quote from it.

Mr. TELLER. I have that case here.

Mr. RAWLINS. They say:

> It is true that the mineral lands of the United States are open to exploration and purchase only by citizens of the United States, or by those who have declared their intention to become such; and, had the objection been taken in the court below that such citizenship of the plaintiffs had not been shown, it might, if not obviated, have been fatal. There is, however, nothing in the record to show that it was raised below.

The court further proceeds to say:

> There can be no question, under the provisions of section 2319 of the Revised Statutes, that when application is made for the issuance of evidence of title to mining property it is necessary to show that the applicant is a citizen of the United States, or has declared his intention to become such, before a conveyance of title can be properly issued; and therefore, as was held by the Supreme Court in the case just cited, if a party is seeking to procure the title to mining property from the United States, if taken at the proper time, the objection of alienage would prevent the acquirement of title, and such objection may be made by any one adversely interested,

Mr. STEWART. Will the Senator allow me in that connection?

Mr. RAWLINS. In one moment. Let me complete reading this opinion.

Mr. STEWART. It applies to the applicant for a patent, not to a locator.

Mr. RAWLINS. No; it declares distinctly in this case—

> and such objection may be made by anyone adversely interested. In such cases the sovereign is a party in fact to the proceeding, which is a direct one, for the procurement of title, and the objection of alienage, no matter by whom suggested, is based solely upon the right of the Government to interpose the fact of alienage as a bar to procuring or holding an interest in realty. If, however, the grant of title, or the equivalent, is made to an alien, it can not be attacked by any third party.

Mr. STEWART. What case is the Senator reading from?

Mr. RAWLINS. I am reading from the decision of the circuit court of appeals, reported in 52 Federal Reporter.

Mr. TELLER. What is the case?

Mr. RAWLINS. It is the case of Billings et al. *vs.* The Aspen Mining and Smelting Company.

Mr. STEWART. The statute expressly requires the applicant for a patent to make that showing. In many cases that have come under my observation where an alien had made a location he would, before he made an application for a patent, declare his intention and relocate it. He must be a citizen or a person who has declared his intention in order to get title from the Government. That is another question. You will find in a subsequent section that that is required.

Mr. RAWLINS. Mr. President, I have invited the attention of both the learned Senators to this matter and invited them to produce authorities. They have produced the Wheaton case and the Wulf case.

Now, Mr. President, that involves the right of an alien to hold by purchase against a stranger to the Government, or the sovereignty. That was the Wulf case, in 152 United States. Those cases are cited in this case to which I have just called attention by the circuit court of appeals. Those cases are cited in the case from my own State. They are referred to in the decisions of the different States, in California, including all the mining States, and in each of those cases this distinction is drawn.

The mining laws of the United States are tendered to citizens or those who have declared their intention to become citizens upon certain conditions. The question of citizenship is one of the conditions upon which it grants this bounty. When the location has been made by a citizen and the other conditions have been complied with, there is a qualified right of property in the mining claim. An alien may come in and purchase that for a valuable consideration of the person who has made the location of it, being a citizen or one who has declared his intention to become a citizen.

In that case every requirement of the mining law has been complied with. The land is no longer open to location, because it has already been validly located. No citizen or alien can then come in and plant himself upon that ground with the license or authority of the laws of the United States. In every such case any trespasser is a mere wrongdoer, and he does not connect himself with the United States or with any authority conferred by the United States; therefore he can not raise the question as to the right of possession under those circumstances. In that case the Government alone can enforce the forfeiture by office found.

But take the case where an alien, when not having declared his intention to become a citizen, has located the mining ground, he does it in violation of the express provision of the act of Congress. The citizen of the United States has the right to go upon that and treat it as a void location and conform to the laws of the United States. When he goes there he goes by the authority or by the direction of the United States, the sovereignty, and in so far as he pursues that authority thus regularly conferred upon him he stands in the shoes of the United States, and for the purpose of effectuating the purposes of the United States and its policy he has a right, when the first locator, being incompetent, challenges his right, under the authority of the United States to say, "Here, you have no right from the Government, and I am in the shoes of the Government to show that you are not a citizen and have not declared your intention to become such, and therefore you are not entitled to locate this ground."

But, on the other hand, if an alien locates and after his location declares his intention to become a citizen, he has thus united his competency with the other conditions prescribed by the law and complied with them, and he is there then by authority of law in possession, and his mining claim is not then subject to relocation. A citizen goes in then as an intruder and does not connect himself with the United States. This has been liberally construed by the courts to the extent of giving a retroactive effect to a declaration of an intention to become a citizen, provided only that it does not interfere with any intervening adverse right; but if so, it can not act retrospectively so as to make valid a void location originally made as against an intervening right acquired by the location of a citizen.

Mr. TELLER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Colorado?

Mr. RAWLINS. Yes; I yield.

Mr. TELLER. I wish to ask a question of the Senator. I understand him now to say that the location made by an alien is a void location. Does he understand that it is treated that way in the Departments?

Mr. RAWLINS. I do. I have here numerous decisions by the Land Office which hold precisely this proposition which I make. I have just read one, a decision rendered in 11 Land Decisions, 354, Central Pacific Railroad Company *vs.* Taylor:

A claim to public land illegally initiated by an alien may not be validated by subsequent declaration of intention to become a citizen in the face of intervening adverse rights.

Mr. TELLER. Is that a mining claim or is that under preemption and homestead?

Mr. RAWLINS. Well, the same principle is applied both to homesteads and preemption and to mining law.

Mr. TELLER. Will the Senator cite a mining case?

Mr. RAWLINS. Yes.

An alien may neither locate nor hold a mining claim.

That is supported by numerous decisions. I will call attention to one:

No act by an alien who has not declared his intention to become a citizen can confer upon him any right to public land.

That is in 14 Land Decisions.

Mr. TELLER. Referring to homestead or preemption entry?

Mr. STEWART. Do I understand the Senator to contend that when an alien has located a mining claim and is in possession working it, a citizen can go upon his place while he is in possession and make a valid location, and thus exercise the sovereign right himself and decide that the possessor is an alien and that the citizen has a right to take it?

Mr. RAWLINS. If he complies with the conditions of the mining law by staking the claim and posting his notice accordingly, and by preliminary work which he has performed upon land on which no one except an alien has begun to make a mining location, the location is valid and he stands in the shoes of the Government.

Mr. STEWART. Suppose he does the work and the other has not had an opportunity to do any work on it?

Mr. RAWLINS. I state the legal principle.

Mr. STEWART. Suppose also that he discovered it and was working it and a man comes along and says, "I am going to take your claim because you are an alien, and I confiscate your property."

Mr. RAWLINS. The laws and policy of the United States do not extend this bounty of free mining to any but citizens and those who have declared their intention to become citizens. Therefore, no alien can, with any kind of good faith, make any mining locations upon lands belonging to the United States. No person can buy of an alien in good faith, knowing him to be an alien, because he knows that it is an evasion or a violation of the settled policy of the United States as declared by the law.

Why, think of it in respect to Alaska. No country on earth gives aliens the right to mine. Very few countries permit them to mine on any conditions; the mines are operated on government account. In Canada they have only a limited right for a year, or a lease founded upon a consideration; in Russia not at all. Yet this proposition which has been contended here by some Senators is that during the Arctic night a few Laplanders in sufficient number from Russia can steal down into the district of Alaska and locate every foot of mineral lands within that immense territory and thereby shut out and exclude for all time the citizens of the United States. I say it is a monstrous proposition. I do not know any personalities in this matter or any cases. I am not here advocating any cases.

Mr. STEWART. The Senator wants to be accurate. Now, there never was any distinction made between an alien and a citizen in all Canada and British Columbia until 1899, and that they are going to repeal. They have practically repealed it by the council already. The same terms were applied in Australia. Thousands of our people went to Australia, and the same rules applied to them.

Mr. RAWLINS. I object——

Mr. STEWART. I am stating a fact. You said it never was done. I say it has been done.

The PRESIDENT pro tempore. The Senator from Utah declines to yield.

Mr. STEWART. Our people have had more benefit from it than anybody else.

Mr. RAWLINS. I have already called attention to the fact that this Government has acted as generously to the people of Canada as they can by any possibility demand. Last year we enacted the provision that native-born citizens of Canada could have the same mining rights that are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada. That law is still in force. If you strike out these provisions, it will still remain in force.

Now, what does the Commissioner of the Land Office say? He says that that has not been operative, not on account of any fault of the United States, but because in Canada the Dominion of Canada does not permit rights at all only by a lease or license. A man may go into Canada and he is restricted, in the first place, to less than a thousand feet square. If he succeeds in obtaining a lease he can only hold it for ten years on the payment of an annual rental and royalty, as stated here, and upon the expenditure of money afterwards for its development. I have examined the law.

Mr. TELLER. Will the Senator allow me to interrupt him?

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Colorado?

Mr. RAWLINS. For a question.

Mr. TELLER. I will call the attention of the Senator, if he does not know the fact, to the fact that a citizen of the United States, by taking out a license on the payment of $5 a year and paying $500, can get a fee-simple title to a claim in Canada.

Mr. RAWLINS. I know he can not.

Mr. TELLER. I know he can.

Mr. RAWLINS. If the Senator will examine the mining laws, the laws of mines in Canada, published last year, and which are in the library——

Mr. TELLER. I wish to say to the Senator that I speak from knowledge, because I have been up there in the mining country, and I know.

Mr. RAWLINS. When?

Mr. TELLER. I have examined the law, and I know that is the law. There can be no mistake about it.

Mr. RAWLINS. Yesterday I invited the attention of the Senator to a volume published last year containing the laws of mines of the Dominion of Canada now in force, and he will find that the statement made by the Commissioner of the Land Office is strictly accurate. What does the Commissioner say in his latest report? It is an official document. The Commissioner says:

Section 13—

Of our law, which I have quoted—

is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

Mr. STEWART. The Senator is entirely mistaken. I examined the law last week, and I have had it here on my table.

Mr. RAWLINS. I want Senators, if they think I am mistaken, to bring in the law.

Mr. STEWART. I did have it here, and I read it. I had it here.

Mr. RAWLINS. I know the Senator read from a letter.

Mr. STEWART. I had a letter here on my table, and I read extracts from it. There never was any distinction between citizens and aliens in Canada, or any part of the country, until 1899, and then——

Mr. RAWLINS. Now, I will make this proposition to Senators. Of course they are experienced, and I dislike to put myself in opposition to them, and I only do it because I am prepared to verify the correctness of my statement. I ask those Senators to examine the Law of Mines of Canada of 1898, page 286, which they can obtain in the library, and they will find that there are only two classes of mining rights which can be procured. One is the lease of less than a thousand feet square, to continue not to exceed ten years, upon compliance with certain conditions and the payment of certain annual rentals, with the right of renewal upon certain conditions; and the other is the license to continue for but a year upon certain considerations for gold mining.

All the rights that our miners have in the Klondike are obtained by virtue of those licenses. They go there, and however much money they may expend, of however immense value the land they may develop by their labor and expenditure, the Dominion of Canada holds the right at the expiration of the year to take and appropriate that to itself. So in regard to the lease; no matter how much money is expended upon the lease for the term of ten years, at the end of ten years it goes to the Dominion of Canada. In the meantime the rents and royalties go to the Dominion of Canada. There is a right of renewal upon certain conditions for ten years, but when that expires the land belongs to the Dominion of Canada. I defy Senators, under the law now in force in the Dominion of Canada, to find where any permanent fee-simple title to mining property can upon any condition or any circumstances be acquired under their laws.

Mr. PETTIGREW. By an alien?

Mr. RAWLINS. Or by a citizen. Of course in the past they have allowed those rights which have been transferred. I am not disputing but that the Senator from Colorado at the time he speaks of may be entirely correct; but I invite attention to the latest policy as enacted into law in the Dominion of Canada, and after the Senator has examined this page to which I refer, if he can find anything in those laws bearing out the contention he makes, of course I shall be glad to withdraw my statement of the fact.

Mr. TELLER. If the Senator will allow me to interrupt him, I understand there was some recent legislation about the Klondike country which, as has been stated, has not been put in force, and which, we are assured, is to be withdrawn. Now, I speak of what I know, having gone both in 1893 and in 1898 into the British Columbia region.

Mr. RAWLINS. I will not dispute, because——

Mr. TELLER. I say there can be a fee-simple title obtained to mining land.

Mr. RAWLINS. Under the revised statutes of Manitoba there was a right to obtain title. I had occasion to examine it.

Mr. TELLER. And you can get title in the Territory of Victoria, too.

Mr. RAWLINS. The Senator is right. At that time under their laws mining rights might be acquired. But that policy has been reversed. There are certain citizens of the United States now owning rights under those older laws; but that policy has been reversed. They have refused our tender of reciprocity in regard to mining privileges.

Mr. President, under these circumstances I say it would be the grossest injustice to citizens of the United States, thousands of them who have taken their fortunes and their lives in their hands and gone to Alaska, to be shut out, excluded absolutely, by the subjects or citizens of Russia, or Great Britain, or any other country, when under our laws, so liberal, made so purposely, because limited to our own citizens or those who intended to become such, one individual may locate any number of claims upon complying with the conditions of those laws.

Now, in Alaska where gold was discovered a single man making the discovery can open and develop and disclose an immense wealth covering, it is estimated, millions of acres, perhaps, of mining lands. An alien, more advantageously situated, a little better adapted, having been supplied by our Government with the means of access so as to reach it at least a little sooner than citizens of the United States, could take the short cut, and that, too, in violation of the express provisions of our law. They do not take time to go to a competent court to declare their intention, but go before some incompetent tribunal to declare it, and by reason of taking the short and illegal cut they could cut out the American citizens, who are taking the lawful and right road pointed out to them by the laws of the United States. You are proposing by legislation to validate and confirm void locations, made under those circumstances, in favor of subjects of Russia, and give to that autocrat these immense treasures which we bought of them by the payment of money, and shut out our own people.

Now, I am not in favor of that. What we ought to do is to let each transaction, each location and its validity, depend upon the circumstances and facts surrounding it by the law in force at the time it was made, giving the rewards to those who have followed the law and conformed to it and not to those who have attempted to violate it by a short road and thus gain a monopoly and exclude those who are at least as meritorious in their efforts to secure this prize as they.

Now, Mr. President, this is about all I care to say on the subject. It is a plain proposition.

Mr. STEWART. Before the Senator takes his seat, I should like to inquire if he is willing that every provision in the bill in regard to mines shall be left out and leave in nothing but a civil code. That, I think, is what we ought to do.

Mr. RAWLINS. I am not prepared to pass upon the entire code.

Mr. STEWART. No; but——

Mr. RAWLINS. I am prepared to say this, that the amendment offered by the Senator from Montana, in my opinion, leaves the mining laws and policies of the United States precisely as they always have been. That amendment does not undertake to dispose of any right if an alien have a right. It does not propose to validate any right or give anything to him if he does not have the right by virtue of the law in force at the time of the transaction.

Mr. STEWART. But the Senator is not willing to leave the laws as they are, but contends that this amendment is harmless.

Mr. RAWLINS. I think that is just what the amendment does, to that extent.

Mr. STEWART. If the amendment leaves it where it is, why not leave out the amendment? What is the object of this legislation to give one man another man's property? If there is no need of legislation on the subject, why change it?

Mr. CARTER. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifteen minutes spent in executive session the doors were reopened, and (at 5 o'clock and 15 minutes p. m.) the Senate adjourned until to-morrow, Saturday, April 28, 1900, at 12 o'clock meridian.

## NOMINATIONS.

*Executive nominations received by the Senate April 27, 1900.*

COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

Henry B. F. Macfarland, of the District of Columbia, to be a Commissioner of the District of Columbia, vice John B. Wight, whose term of office will expire May 5, 1900.

John W. Ross, of the District of Columbia, to be a Commissioner of the District of Columbia—a reappointment—whose term of office will expire May 5, 1900.

SECRETARY OF LEGATION.

Sidney B. Everett, of Massachusetts, now consul at Batavia, to be secretary of the legation of the United States at Guatemala City, Guatemala, to fill an original vacancy.

UNITED STATES ATTORNEY.

William Wirt Howe, of Louisiana, to be attorney of the United States for the eastern district of Louisiana, vice J. Ward Gurley, jr., whose term will expire May 25, 1900.

PROMOTION IN THE NAVY.

Commander James H. Dayton, to be a captain in the Navy from the 29th day of March, 1900, vice Capt. Silas W. Terry, promoted.

## CONFIRMATIONS.

*Executive nominations confirmed by the Senate April 27, 1900.*

AUDITOR FOR PORTO RICO.

John R. Garrison, of the District of Columbia, to be auditor of the island of Porto Rico.

POSTMASTERS.

Luther M. Alleman, to be postmaster at Littlestown, in the county of Adams and State of Pennsylvania.

Ollie McKellar, to be postmaster at Corning, in the county of Tehama and State of California.

Granville F. Heathcote, to be postmaster at Glen Rock, in the county of York and State of Pennsylvania.

William H. Flora, to be postmaster at Wrightsville, in the county of York and State of Pennsylvania.

Andrew L. Bolger, to be postmaster at Philipsburg, in the county of Center and State of Pennsylvania.

Hiram Jelliffe, to be postmaster at Saugatuck, in the county of Fairfield and State of Connecticut.

Martin B. Allen, to be postmaster at Honesdale, in the county of Wayne and State of Pennsylvania.

Emma Lobb, to be postmaster at Luzerne, in the county of Luzerne and State of Pennsylvania.

Caleb D. Kinner, to be postmaster at Merrick, in the county of Hampden and State of Massachusetts.

Orick H. Kelley, to be postmaster at North Plymouth, in the county of Plymouth and State of Massachusetts.

Frederic E. C. Robbins, to be postmaster at Woodfords, in the county of Cumberland and State of Maine.

Edwin Smith, to be postmaster at Mittineague, in the county of Hampden and State of Massachusetts.

Frederic Robbins, to be postmaster at Watertown, in the county of Middlesex and State of Massachusetts.

Frank E. Nichols, to be postmaster at Warren, in the county of Worcester and State of Massachusetts.

Milton W. Newkirk, to be postmaster at Central Lake, in the county of Antrim and State of Michigan.

Willis M. Wellington, to be postmaster at Oxford, in the county of Worcester and State of Massachusetts.

Martin E. Stockbridge, to be postmaster at Dalton, in the county of Berkshire and State of Massachusetts.

Henry S. Wickware, to be postmaster at Cass City, in the county of Tuscola and State of Michigan.

Louis H. Tovatt, to be postmaster at Standish, in the county of Arenac and State of Michigan.

Ralph Taylor, to be postmaster at Clayton, in the county of Lenawee and State of Michigan.

Frank M. Rhomberg, to be postmaster at Alamogordo, in the county of Otero and Territory of New Mexico.

Theodore R. Hofer, jr., to be postmaster at Carson City, in the county of Ormsby and State of Nevada.

Godfrey Haldiman, to be postmaster at California, in the county Moniteau and State of Missouri.

James E. Rupert, to be postmaster at Conneautville, in the county of Crawford and State of Pennsylvania.

John H. Brubaker, to be postmaster at Elizabethtown, in the county of Lancaster and State of Pennsylvania.

John W. Rice, to be postmaster at Weatherford, in the county of Custer and Territory of Oklahoma.

William E. Homme, to be postmaster at Wittenberg, in the county of Shawano and State of Wisconsin.

Hulda J. Fessenden, to be postmaster at Saylesville, in the county of Providence and State of Rhode Island.

Samuel A. Smith, to be postmaster at Indiana, in the county of Indiana and State of Pennsylvania.